

FIRST DIVISION

[G.R. NO. 166651, December 09, 2005]

**REPUBLIC OF THE PHILIPPINES (REPRESENTED BY THE
DEPARTMENT OF ENERGY [DOE] AND THE PHILIPPINE
NATIONAL OIL COMPANY-ENERGY DEVELOPMENT
CORPORATION [PNOC-EDC]), PETITIONER, VS. CITY OF
KIDAPAWAN, KIDAPAWAN CITY ASSESSOR AND KIDAPAWAN
CITY TREASURER, RESPONDENTS.**

D E C I S I O N

YNARES-SANTIAGO, J.:

This petition for review on certiorari^[1] assails the September 8, 2004 Decision^[2] and the January 10, 2005 Order^[3] of the Regional Trial Court of Kidapawan City, Cotabato, Branch 17, in Civil Case No. 2003-14. The trial court held that the Philippine National Oil Company-Energy Development Corporation (PNOC-EDC) is not exempt from payment of real property taxes over the Mt. Apo Geothermal Reservation Area (MAGRA); enjoined the sale by public auction of the MAGRA; but allowed respondents to proceed with the sale of the existing improvements thereon.

In order to reduce the country's dependence on imported energy supplies and accelerate the development of geothermal resources, then President Ferdinand E. Marcos issued Presidential Decree (PD) No. 1442^[4] which allowed the government to enter into service contracts for financial, technical, management or other forms of assistance with qualified domestic and foreign entities, for the exploration, development, exploitation, or utilization of the country's geothermal resources.

On January 30, 1992, then President Corazon C. Aquino issued Proclamation No. 853^[5] which excluded certain portions of the land embraced in the Mt. Apo National Park and declared the same as geothermal reservation under the administration of the PNOC, now referred to as the MAGRA.

On March 24, 1992, the government through the Office of Energy Affairs (now Department of Energy, DOE) entered into a service contract^[6] with PNOC-EDC, a government owned or controlled corporation created and existing under the Corporation Code,^[7] to exclusively conduct geothermal operations within the MAGRA. Under the contract, the PNOC-EDC would furnish the necessary services, technology and financing for the geothermal operations subject to the direct supervision of the DOE. Thereafter, PNOC-EDC built a 104-megawatt power plant within the MAGRA which produces electricity through turbines using steam extracted from the MAGRA as fuel.^[8]

Subsequently, the City Treasurer of Kidapawan, Cotabato notified PNOC-EDC of its tax delinquency after which, he issued a warrant of levy on the 701-hectare

MAGRA^[9] for failure to pay real property taxes, covering the tax period from 1993-2002. Thereafter, he sent a notice of sale of delinquent real property to PNOC-EDC declaring that delinquent real property will be sold through public auction.^[10]

PNOC-EDC thus filed a petition for prohibition with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order^[11] which sought to enjoin the respondents from issuing assessments or notice of delinquency and from proceeding with the public auction of the Geothermal Reservation Area.

On May 14, 2003, the Regional Trial Court of Kidapawan City, Branch 23, issued an Order^[12] directing respondents to desist from proceeding with the public auction on the ground that the same is part of the public domain and thus inalienable. The order was reiterated on June 3, 2003, and the respondents were again directed to desist from enforcing the warrant of levy and from selling at public auction the subject property until the case is finally resolved or upon further order.^[13]

On September 8, 2004, the Regional Trial Court rendered a Decision, the dispositive portion of which states:

WHEREFORE, IN VIEW OF THE FOREGOING DISCUSSIONS and CONSIDERATIONS, this Court Holds that PNOC-EDC is not exempt from the payment of real property taxes over the Mt. Apo Geothermal Area as Section 6.2 of the Contract could not be the basis of the exemption being ineffectual and for the failure of PNOC-EDC to prove by a preponderance of evidence that it is not the "beneficial user" of the subject property. For which reason, there is no legal impediment for the respondents to make such assessment, to find PNOC-EDC liable and to accordingly exact payment for the said tax delinquency in accordance with law.

Respondents however cannot sell on public auction any part of, or the entire, Mt. Apo Geothermal Area being exempt from such sale by reason of its nature and character.

Respondents may proceed with the auction on the existing improvements such as but not limited to buildings, infrastructures, machineries and the likes in accordance with law.

The Writ of Preliminary Injunction earlier issued by this Court, being no longer necessary is dissolve and/or set aside.

No pronouncement as to costs.

SO ORDERED.^[14]

The trial court found that PNOC-EDC is not exempt from paying the real property taxes and that the MAGRA is part of the Mt. Apo National Park which has not been re-classified as alienable agricultural land. Thus, it could not be sold at public auction. However, the trial court ordered that the improvements on the subject land, not being in the nature of public dominion, may be validly levied and sold at public auction to satisfy the payment of realty tax delinquencies.

PNOC-EDC's motion for reconsideration was denied, hence, this petition.

The issues for resolution are: (1) whether PNOC-EDC is the beneficial user of the MAGRA; (2) whether Republic Act (RA) No. 7160 or the Local Government Code (LGC) withdrew the exemption under the service contract; (3) if PNOC-EDC is liable to pay the real property taxes, whether the machineries, equipment, buildings and other infrastructures found in MAGRA may be levied; and (4) whether the assessment has become final and executory.

PNOC-EDC avers that under Section 234, paragraph (a) of the LGC, MAGRA, which is a real property owned by the government, can only be subjected to real property tax if its beneficial use is transferred to a taxable person. Citing Sections 1.2, 6.1(d) and 6.3 of the service contract, and Section 1 of PD 1442, it argues that PNOC-EDC is not liable to pay the real property tax since the beneficial use of MAGRA was retained by the government.

On the other hand, respondents assert that PNOC-EDC is a taxable entity because it is not a political subdivision or a government owned or controlled corporation which is exempt from taxes under its charter. They maintain that under the service contract, the PNOC-EDC retains absolute control of the operations and is thus the beneficial user of the property.

Respondents quote with approval the decision of the trial court which stated that PNOC-EDC not only receives 40% of the net share, but the provisions of the service contract likewise indicated that PNOC-EDC is the beneficial user. They aver that PNOC-EDC has control over the actual conduct of the geothermal operations, while the government through the DOE has supervision only.

The petition is partly meritorious.

PNOC-EDC is a government owned or controlled corporation conferred by law with corporate powers. Under its charter, no tax exemptions were granted. Even if PNOC-EDC was awarded exemptions in its charter, the same were withdrawn by the LGC. Thus, there is no need to deliberate on whether PNOC-EDC is a taxable entity but on whether it is an entity exempt from paying real property tax.

The exemption claimed by PNOC-EDC hinges on Section 234, paragraph (a) of the LGC which reads:

SECTION 234. *Exemptions from Real Property Tax.* – The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

The above provision exempts from real property taxation properties of the government, provided the beneficial use of the property was not transferred to a taxable person. Conversely, if the beneficial use has been transferred to a taxable entity, such as PNOC-EDC, then the real property owned by the government, which in this case is the MAGRA, is subject to real property tax. At this point, it is well to note that in real estate taxation, the unpaid tax attaches to the property and is

chargeable against the taxable person who had actual or beneficial use and possession of it regardless of whether or not he is the owner.^[15]

Under the service contract entered into by the government and PNOC-EDC, the latter is both the beneficial and actual user of the MAGRA. The relevant provisions of the contract read, to wit:

- 1.2 The CONTRACTOR [in this case, the PNOC-EDC] shall at all times be subject to the direct supervision of the OEA (now DOE) and is hereby appointed and constituted as the exclusive party to conduct geothermal operations. The OEA shall have the right to require the CONTRACTOR to perform any or all obligations under this Contract.

....

- 2.8 Geothermal Operations shall include exploration, development and production. ...

....

Production is the set of activities which involve the actual extraction of geothermal fluid for commercial utilization.

....

- 2.15 Gross Value is the amount realized from the sale of geothermal resources and its by-product at a contracted price and such other income which arises from any geothermal operation.

- 2.16 Net Value means the gross value less the operating expenses reimbursed pursuant to Section 7.2.

....

- 2.20 Operating Expenses means the total expenditures incurred by the CONTRACTOR both within and without the Philippines in geothermal operations pursuant to this contract and determined in accordance with the Accounting Procedure attached hereto and made part thereof as of Annex "B".

....

- 4.1 On or before the end of the third Contract Year, the CONTRACTOR shall surrender twenty five (25%) percent of the initial Contract Area.

- 4.2 On or before the end of the fifth Contract Year and if the contract is extended pursuant to Section 3.1 for another two years, the CONTRACTOR shall surrender an additional area equal to twenty five (25%) percent of the initial Contract Area.

...

- 7.2 In each year, the CONTRACTOR will recover from Gross Value, an amount equal to all Operating Expenses as defined in Section 2.20;

Provided, that the amount so recovered shall not exceed ninety percent (90%) of the Gross Value in any year;

Provided, further, that if in any year the Operating Expenses exceed ninety (90%) percent of the Gross Value, or there is no Gross Value, then the unreimbursed expenses shall be recovered from the Gross Value in the succeeding years.

- 7.3 The CONTRACTOR will retain an amount equal to its fee of forty (40%) percent of the Net Value as defined in Section 2.16.

...

- 8.1 The GOVERNMENT shall assume and pay on behalf of CONTRACTOR all income taxes payable to the Republic of the Philippines based on income or profit derived from geothermal operations. It is understood, however, that such income tax payment shall come from the Government Share of sixty percent (60%) of the Net Value.

- 8.2 ...

In computing the Taxable Net Income the CONTRACTOR shall be allowed to deduct Operating Expenses recovered pursuant to Section 7.2 above.

....

- 8.4 The OEA upon payment by it of the CONTRACTOR's income taxes shall procure an official receipt in the name of the CONTRACTOR. The official receipt evidencing payment shall be supplied by the OEA to the CONTRACTOR.^[16]

It is clear from the above-cited provisions that the PNOC-EDC is the beneficial user of the MAGRA and is thus liable to pay the real property tax assessments. PNOC-EDC exclusively conducts geothermal operations in the area for commercial utilization. It retains a profit in the amount of 40% of the net value of the amount realized from the sale of geothermal resources. It is even allowed to charge its operating expenses from the gross value of the sales.

The provisions of the service contract also show that it is the PNOC-EDC which actually utilizes the MAGRA. Actual use refers to the purpose for which the property is principally or predominantly utilized by the person in possession thereof.^[17] In fact, under the provisions of the service contract, PNOC-EDC must surrender possession of 25% of the MAGRA to the government after the 3rd year and another