

EN BANC

[G. R. No. 133250, May 06, 2003]

**FRANCISCO I. CHAVEZ, PETITIONER, VS. PUBLIC ESTATES
AUTHORITY AND AMARI COASTAL BAY DEVELOPMENT
CORPORATION, RESPONDENTS.**

RESOLUTION

CARPIO, J.:

For resolution of the Court are the following motions: (1) Motion to Inhibit and for Re-Deliberation filed by respondent Amari Coastal Bay Development Corporation ("Amari" for brevity) on September 13, 2002; (2) Motion to Set Case for Hearing on Oral Argument filed by Amari on August 20, 2002; (3) Motion for Reconsideration and Supplement to Motion for Reconsideration filed by Amari on July 26, 2002 and August 20, 2002, respectively; (4) Motion for Reconsideration and Supplement to Motion for Reconsideration filed by respondent Public Estates Authority ("PEA" for brevity) on July 26, 2002 and August 8, 2002, respectively; and (5) Motion for Reconsideration and/or Clarification filed by the Office of the Solicitor General on July 25, 2002. Petitioner Francisco I. Chavez filed on November 13, 2002 his Consolidated Opposition to the main and supplemental motions for reconsideration.

To recall, the Court's decision of July 9, 2002 ("Decision" for brevity) on the instant case states in its summary:

We can now summarize our conclusions as follows:

1. The 157.84 hectares of reclaimed lands comprising the Freedom Islands, now covered by certificates of title in the name of PEA, are ***alienable lands of the public domain***. PEA may lease these lands to private corporations but may not sell or transfer ownership of these lands to private corporations. PEA may only sell these lands to Philippine citizens, subject to the ownership limitations in the 1987 Constitution and existing laws.
2. The 592.15 hectares of submerged areas of Manila Bay remain inalienable natural resources of the public domain until classified as alienable or disposable lands open to disposition and declared no longer needed for public service. The government can make such classification and declaration only after PEA has reclaimed these submerged areas. Only then can these lands qualify as agricultural lands of the public domain, which are the only natural resources the government can alienate. In their present state, the 592.15 hectares of

submerged areas are ***inalienable and outside the commerce of man***.

3. Since the Amended JVA seeks to transfer to AMARI, a private corporation, ownership of 77.34 hectares of the Freedom Islands, such transfer is void for being contrary to Section 3, Article XII of the 1987 Constitution which prohibits private corporations from acquiring any kind of alienable land of the public domain.

4. Since the Amended JVA also seeks to transfer to AMARI ownership of 290.156 hectares of still submerged areas of Manila Bay, such transfer is void for being contrary to Section 2, Article XII of the 1987 Constitution which prohibits the alienation of natural resources other than agricultural lands of the public domain. PEA may reclaim these submerged areas. Thereafter, the government can classify the reclaimed lands as alienable or disposable, and further declare them no longer needed for public service. Still, the transfer of such reclaimed alienable lands of the public domain to AMARI will be void in view of Section 3, Article XII of the 1987 Constitution which prohibits private corporations from acquiring any kind of alienable land of the public domain.

Clearly, the Amended JVA violates glaringly Sections 2 and 3, Article XII of the 1987 Constitution. Under Article 1409 of the Civil Code, contracts whose "object or purpose is contrary to law," or whose "object is outside the commerce of men," are "inexistent and void from the beginning." The Court must perform its duty to defend and uphold the Constitution, and therefore declares the Amended JVA ***null and void ab initio***.

Amari seeks the inhibition of Justice Antonio T. Carpio, *ponente* of the Decision, on the ground that Justice Carpio, before his appointment to the Court, wrote in his *Manila Times* column of July 1, 1997, "I have always maintained that the law requires the public bidding of reclamation projects." Justice Carpio, then a private law practitioner, also stated in the same column, "The Amari-PEA reclamation contract is legally flawed because it was not bid out by the PEA." Amari claims that because of these statements Justice Carpio should inhibit himself "on the grounds of bias and prejudgment" and that the instant case should be "re-deliberated" after being assigned to a new *ponente*.

The motion to inhibit Justice Carpio must be denied for three reasons. *First*, the motion to inhibit came after Justice Carpio had already rendered his opinion on the merits of the case. The rule is that a motion to inhibit must be denied if filed after a member of the Court had already given an opinion on the merits of the case,^[1] the rationale being that "a litigant cannot be permitted to speculate upon the action of the Court xxx (only to) raise an objection of this sort after a decision has been rendered." *Second*, as can be readily gleaned from the summary of the Decision quoted above, the absence of public bidding is not one of the *ratio decidendi* of the Decision which is anchored on violation of specific provisions of the Constitution. The absence of public bidding was not raised as an issue by the parties. The

absence of public bidding was mentioned in the Decision only to complete the discussion on the law affecting reclamation contracts for the guidance of public officials. At any rate, the Office of the Solicitor General in its Motion for Reconsideration **concedes** that the absence of public bidding in the disposition of the Freedom Islands rendered the Amended JVA null and void.^[2] *Third*, judges and justices are not disqualified from participating in a case just because they have written legal articles on the law involved in the case. As stated by the Court in ***Republic v. Cocofed***,^[3] —

The mere fact that, as a former columnist, Justice Carpio has written on the coconut levy will not disqualify him, in the same manner that jurists will not be disqualified just because they may have given their opinions as textbook writers on the question involved in a case.

Besides, the subject and title of the column in question was "The CCP reclamation project" and the column referred to the Amari-PEA contract only in passing in one sentence.

Amari's motion to set the case for oral argument must also be denied since the pleadings of the parties have discussed exhaustively the issues involved in the case.

The motions for reconsideration reiterate mainly the arguments already discussed in the Decision. We shall consider in this Resolution only the new arguments raised by respondents.

In its Supplement to Motion for Reconsideration, Amari argues that the Decision should be made to apply prospectively, not retroactively to cover the Amended JVA. Amari argues that the existence of a statute or executive order prior to its being adjudged void is an operative fact to which legal consequences are attached, citing ***De Agbayani v. PNB***,^[4] thus:

x x x. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so as until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.

In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a determination [of unconstitutionality], is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a

new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, — with respect to particular relations, individual and corporate, and particular conduct, private and official." This language has been quoted with approval in a resolution in *Araneta v. Hill* and the decision in *Manila Motor Co., Inc. v. Flores*. x x x.

x x x

x x x That before the decision they were not constitutionally infirm was admitted expressly. There is all the more reason then to yield assent to the now prevailing principle that the existence of a statute or executive order prior to its being adjudged void is an operative fact to which legal consequences are attached.

Amari now claims that "assuming arguendo that Presidential Decree Nos. 1084 and 1085, and Executive Order Nos. 525 and 654 are inconsistent with the 1987 Constitution, the limitation imposed by the Decision on these decrees and executive orders should only be applied prospectively from the finality of the Decision."

Amari likewise asserts that a new doctrine of the Court cannot operate retroactively if it impairs vested rights. Amari maintains that the new doctrine embodied in the Decision cannot apply retroactively on those who relied on the old doctrine in good faith, citing ***Spouses Benzonan v. Court of Appeals***,^[5] thus:

At that time, the prevailing jurisprudence interpreting section 119 of R.A. 141 as amended was that enunciated in *Monge* and *Tupas* cited above. The petitioners Benzonan and respondent Pe and the DBP are bound by these decisions for pursuant to Article 8 of the Civil Code "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that "laws shall have no retroactive effect unless the contrary is provided." This is expressed in the familiar legal maxim *lex prospicit, non respicit*, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional (*Francisco v. Certeza*, 3 SCRA 565 [1961]).

The same consideration underlies our rulings giving only prospective effect to decisions enunciating new doctrines. Thus, we emphasized in *People v. Jabinal*, 55 SCRA 607 [1974] "x x x when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.

There may be special cases where weighty considerations of equity and social justice will warrant a retroactive application of doctrine to temper the harshness of statutory law as it applies to poor farmers or their widows and orphans. In the present petitions, however, we find no such equitable considerations. Not only did the private respondent apply for

free agricultural land when he did not need it and he had no intentions of applying it to the noble purposes behind the law, he would now repurchase for only P327,995.00, the property purchased by the petitioners in good faith for P1,650,000.00 in 1979 and which, because of improvements and the appreciating value of land must be worth more than that amount now.

The buyers in good faith from DBP had a right to rely on our rulings in *Monge* and *Tupas* when they purchased the property from DBP in 1979 or thirteen (13) years ago. Under the rulings in these two cases, the period to repurchase the disputed lot given to respondent Pe expired on June 18, 1982. He failed to exercise his right. His lost right cannot be revived by relying on the 1988 case of *Belisario*. The right of petitioners over the subject lot had already become vested as of that time and cannot be impaired by the retroactive application of the *Belisario* ruling.

Amari's reliance on ***De Agbayani*** and ***Spouses Benzonan*** is misplaced. These cases would apply if the prevailing law or doctrine at the time of the signing of the Amended JVA was that a private corporation could acquire alienable lands of the public domain, and the Decision annulled the law or reversed this doctrine. Obviously, this is not the case here.

Under the 1935 Constitution, private corporations were allowed to acquire alienable lands of the public domain. But since the effectivity of the 1973 Constitution, private corporations were banned from holding, except by lease, alienable lands of the public domain. The 1987 Constitution continued this constitutional prohibition. The prevailing law before, during and after the signing of the Amended JVA is that private corporations cannot hold, except by lease, alienable lands of the public domain. The Decision has not annulled or in any way changed the law on this matter. The Decision, whether made retroactive or not, does not change the law since the Decision merely reiterates the law that prevailed since the effectivity of the 1973 Constitution. Thus, ***De Agbayani***, which refers to a law that is invalidated by a decision of the Court, has no application to the instant case.

Likewise, ***Spouses Benzonan*** is inapplicable because it refers to a doctrine of the Court that is overruled by a subsequent decision which adopts a new doctrine. In the instant case, there is no previous doctrine that is overruled by the Decision. Since the case of ***Manila Electric Company v. Judge Castro-Bartolome***,^[6] decided on June 29, 1982, the Court has applied consistently the constitutional provision that private corporations cannot hold, except by lease, alienable lands of the public domain. The Court reiterated this in numerous cases, and the only dispute in the application of this constitutional provision is whether the land in question had already become private property before the effectivity of the 1973 Constitution.^[7] If the land was already private land before the 1973 Constitution because the corporation had possessed it openly, continuously, exclusively and adversely for at least thirty years since June 12, 1945 or earlier, then the corporation could apply for judicial confirmation of its imperfect title. But if the land remained public land upon the effectivity of the 1973 Constitution, then the corporation could never hold, except by lease, such public land. Indisputably, the Decision does not overrule any previous doctrine of the Court.

The prevailing doctrine before, during and after the signing of the Amended JVA is