

EN BANC

[G.R. No. 133250, July 09, 2002]

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

DECISION

CARPIO, J.:

This is an original Petition for *Mandamus* with prayer for a writ of preliminary injunction and a temporary restraining order. The petition seeks to compel the Public Estates Authority (“PEA” for brevity) to disclose all facts on PEA’s then on-going renegotiations with Amari Coastal Bay and Development Corporation (“AMARI” for brevity) to reclaim portions of Manila Bay. The petition further seeks to enjoin PEA from signing a new agreement with AMARI involving such reclamation.

The Facts

On November 20, 1973, the government, through the Commissioner of Public Highways, signed a contract with the Construction and Development Corporation of the Philippines (“CDCP” for brevity) to reclaim certain foreshore and offshore areas of Manila Bay. The contract also included the construction of Phases I and II of the Manila-Cavite Coastal Road. CDCP obligated itself to carry out all the works in consideration of fifty percent of the total reclaimed land.

On February 4, 1977, then President Ferdinand E. Marcos issued Presidential Decree No. 1084 creating PEA. PD No. 1084 tasked PEA “to reclaim land, including foreshore and submerged areas,” and “to develop, improve, acquire, x x x lease and sell any and all kinds of lands.”^[1] On the same date, then President Marcos issued Presidential Decree No. 1085 transferring to PEA the “lands reclaimed in the foreshore and offshore of the Manila Bay”^[2] under the Manila-Cavite Coastal Road and Reclamation Project (MCCRRP).

On December 29, 1981, then President Marcos issued a memorandum directing PEA to amend its contract with CDCP, so that “[A]ll future works in MCCRRP x x x shall be funded and owned by PEA.” Accordingly, PEA and CDCP executed a Memorandum of Agreement dated December 29, 1981, which stated:

“(i) CDCP shall undertake all reclamation, construction, and such other works in the MCCRRP as may be agreed upon by the parties, to be paid according to progress of works on a unit price/lump sum basis for items of work to be agreed upon, subject to price escalation, retention and other terms and conditions provided for in Presidential Decree No. 1594. All the financing required for such works shall be provided by PEA.

x x x

(iii) x x x CDCP shall give up all its development rights and hereby agrees to cede and transfer in favor of PEA, all of the rights, title, interest and participation of CDCP in and to all the areas of land reclaimed by CDCP in the MCCRRP as of December 30, 1981 which have not yet been sold, transferred or otherwise disposed of by CDCP as of said date, which areas consist of approximately Ninety-Nine Thousand Four Hundred Seventy Three (99,473) square meters in the Financial Center Area covered by land pledge No. 5 and approximately Three Million Three Hundred Eighty Two Thousand Eight Hundred Eighty Eight (3,382,888) square meters of reclaimed areas at varying elevations above Mean Low Water Level located outside the Financial Center Area and the First Neighborhood Unit.”^[3]

On January 19, 1988, then President Corazon C. Aquino issued Special Patent No. 3517, granting and transferring to PEA “the parcels of land so reclaimed under the Manila-Cavite Coastal Road and Reclamation Project (MCCRRP) containing a total area of one million nine hundred fifteen thousand eight hundred ninety four (1,915,894) square meters.” Subsequently, on April 9, 1988, the Register of Deeds of the Municipality of Parañaque issued Transfer Certificates of Title Nos. 7309, 7311, and 7312, in the name of PEA, covering the three reclaimed islands known as the “Freedom Islands” located at the southern portion of the Manila-Cavite Coastal Road, Parañaque City. The Freedom Islands have a total land area of One Million Five Hundred Seventy Eight Thousand Four Hundred and Forty One (1,578,441) square meters or 157.841 hectares.

On April 25, 1995, PEA entered into a Joint Venture Agreement (“JVA” for brevity) with AMARI, a private corporation, to develop the Freedom Islands. The JVA also required the reclamation of an additional 250 hectares of submerged areas surrounding these islands to complete the configuration in the Master Development Plan of the Southern Reclamation Project-MCCRRP. PEA and AMARI entered into the JVA through negotiation without public bidding.^[4] On April 28, 1995, the Board of Directors of PEA, in its Resolution No. 1245, confirmed the JVA. ^[5] On June 8, 1995, then President Fidel V. Ramos, through then Executive Secretary Ruben Torres, approved the JVA.^[6]

On November 29, 1996, then Senate President Ernesto Maceda delivered a privilege speech in the Senate and denounced the JVA as the “grandmother of all scams.” As a result, the Senate Committee on Government Corporations and Public Enterprises, and the Committee on Accountability of Public Officers and Investigations, conducted a joint investigation. The Senate Committees reported the results of their investigation in Senate Committee Report No. 560 dated September 16, 1997.^[7] Among the conclusions of their report are: (1) the reclaimed lands PEA seeks to transfer to AMARI under the JVA are lands of the public domain which the government has not classified as alienable lands and therefore PEA cannot alienate these lands; (2) the certificates of title covering the Freedom Islands are thus void, and (3) the JVA itself is illegal.

On December 5, 1997, then President Fidel V. Ramos issued Presidential Administrative Order No. 365 creating a Legal Task Force to conduct a study on the legality of the JVA in view of Senate Committee Report No. 560. The members of the Legal Task Force were the Secretary of Justice,^[8] the Chief Presidential Legal Counsel,^[9] and the Government Corporate Counsel.^[10] The Legal Task Force upheld the legality of the JVA, contrary to the conclusions reached by the Senate Committees.

^[11]

On April 4 and 5, 1998, the *Philippine Daily Inquirer* and *Today* published reports that there were on-going renegotiations between PEA and AMARI under an order issued by then President Fidel V. Ramos. According to these reports, PEA Director Nestor Kalaw, PEA Chairman Arsenio Yulo and retired Navy Officer Sergio Cruz composed the negotiating panel of PEA.

On April 13, 1998, Antonio M. Zulueta filed before the Court a *Petition for Prohibition with Application for the Issuance of a Temporary Restraining Order and Preliminary Injunction* docketed as G.R. No. 132994 seeking to nullify the JVA. The Court dismissed the petition “for unwarranted disregard of judicial hierarchy, without prejudice to the refiling of the case before the proper court.”^[12]

On April 27, 1998, petitioner Frank I. Chavez (“Petitioner” for brevity) as a taxpayer, filed the instant *Petition for Mandamus with Prayer for the Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order*. Petitioner contends the government stands to lose billions of pesos in the sale by PEA of the reclaimed lands to AMARI. Petitioner prays that PEA publicly disclose the terms of any renegotiation of the JVA, invoking Section 28, Article II, and Section 7, Article III, of the 1987 Constitution on the right of the people to information on matters of public concern. Petitioner assails the sale to AMARI of lands of the public domain as a blatant violation of Section 3, Article XII of the 1987 Constitution prohibiting the sale of alienable lands of the public domain to private corporations. Finally, petitioner asserts that he seeks to enjoin the loss of billions of pesos in properties of the State that are of public dominion.

After several motions for extension of time,^[13] PEA and AMARI filed their Comments on October 19, 1998 and June 25, 1998, respectively. Meanwhile, on December 28, 1998, petitioner filed an Omnibus Motion: (a) to require PEA to submit the terms of the renegotiated PEA-AMARI contract; (b) for issuance of a temporary restraining order; and (c) to set the case for hearing on oral argument. Petitioner filed a Reiterative Motion for Issuance of a TRO dated May 26, 1999, which the Court denied in a Resolution dated June 22, 1999.

In a Resolution dated March 23, 1999, the Court gave due course to the petition and required the parties to file their respective memoranda.

On March 30, 1999, PEA and AMARI signed the Amended Joint Venture Agreement (“Amended JVA,” for brevity). On May 28, 1999, the Office of the President under the administration of then President Joseph E. Estrada approved the Amended JVA.

Due to the approval of the Amended JVA by the Office of the President, petitioner now prays that on “constitutional and statutory grounds the renegotiated contract be declared null and void.”^[14]

The Issues

The issues raised by petitioner, PEA^[15] and AMARI^[16] are as follows:

- I. WHETHER THE PRINCIPAL RELIEFS PRAYED FOR IN THE PETITION ARE MOOT AND ACADEMIC BECAUSE OF SUBSEQUENT EVENTS;
- II. WHETHER THE PETITION MERITS DISMISSAL FOR FAILING TO OBSERVE THE PRINCIPLE GOVERNING THE HIERARCHY OF COURTS;

III. WHETHER THE PETITION MERITS DISMISSAL FOR NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES;

IV. WHETHER PETITIONER HAS *LOCUS STANDI* TO BRING THIS SUIT;

V. WHETHER THE CONSTITUTIONAL RIGHT TO INFORMATION INCLUDES OFFICIAL INFORMATION ON ON-GOING NEGOTIATIONS BEFORE A FINAL AGREEMENT;

VI. WHETHER THE STIPULATIONS IN THE AMENDED JOINT VENTURE AGREEMENT FOR THE TRANSFER TO AMARI OF CERTAIN LANDS, RECLAIMED AND STILL TO BE RECLAIMED, VIOLATE THE 1987 CONSTITUTION; AND

VII. WHETHER THE COURT IS THE PROPER FORUM FOR RAISING THE ISSUE OF WHETHER THE AMENDED JOINT VENTURE AGREEMENT IS GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT.

The Court's Ruling

First issue: whether the principal reliefs prayed for in the petition are moot and academic because of subsequent events.

The petition prays that PEA publicly disclose the “terms and conditions of the on-going negotiations for a new agreement.” The petition also prays that the Court enjoin PEA from “privately entering into, perfecting and/or executing any new agreement with AMARI.”

PEA and AMARI claim the petition is now moot and academic because AMARI furnished petitioner on June 21, 1999 a copy of the signed Amended JVA containing the terms and conditions agreed upon in the renegotiations. Thus, PEA has satisfied petitioner’s prayer for a public disclosure of the renegotiations. Likewise, petitioner’s prayer to enjoin the signing of the Amended JVA is now moot because PEA and AMARI have already signed the Amended JVA on March 30, 1999. Moreover, the Office of the President has approved the Amended JVA on May 28, 1999.

Petitioner counters that PEA and AMARI cannot avoid the constitutional issue by simply fast-tracking the signing and approval of the Amended JVA before the Court could act on the issue. Presidential approval does not resolve the constitutional issue or remove it from the ambit of judicial review.

We rule that the signing of the Amended JVA by PEA and AMARI and its approval by the President cannot operate to moot the petition and divest the Court of its jurisdiction. PEA and AMARI have still to implement the Amended JVA. The prayer to enjoin the signing of the Amended JVA on constitutional grounds necessarily includes preventing its implementation if in the meantime PEA and AMARI have signed one in violation of the Constitution. Petitioner’s principal basis in assailing the renegotiation of the JVA is its violation of Section 3, Article XII of the Constitution, which prohibits the government from alienating lands of the public domain to private corporations. If the Amended JVA indeed violates the Constitution, it is the duty of the Court to enjoin its implementation, and if already implemented, to annul the effects of such unconstitutional contract.

The Amended JVA is not an ordinary commercial contract but one which seeks to ***transfer title and ownership to 367.5 hectares of reclaimed lands and submerged areas of Manila Bay to a single private corporation.*** It now becomes more compelling for the Court to resolve the issue to insure the government itself does not violate a provision of the Constitution intended to safeguard the national patrimony.

Supervening events, whether intended or accidental, cannot prevent the Court from rendering a decision if there is a grave violation of the Constitution. In the instant case, if the Amended JVA runs counter to the Constitution, the Court can still prevent the transfer of title and ownership of alienable lands of the public domain in the name of AMARI. Even in cases where supervening events had made the cases moot, the Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, bar, and the public.^[17]

Also, the instant petition is a case of first impression. All previous decisions of the Court involving Section 3, Article XII of the 1987 Constitution, or its counterpart provision in the 1973 Constitution,^[18] covered **agricultural lands** sold to private corporations which acquired the lands from private parties. The transferors of the private corporations claimed or could claim the right to **judicial confirmation of their imperfect titles**^[19] under **Title II** of Commonwealth Act. 141 (“CA No. 141” for brevity). In the instant case, AMARI seeks to acquire from PEA, a public corporation, reclaimed lands and submerged areas for **non-agricultural** purposes by **purchase** under PD No. 1084 (charter of PEA) and **Title III** of CA No. 141. Certain undertakings by AMARI under the Amended JVA constitute the consideration for the purchase. Neither AMARI nor PEA can claim judicial confirmation of their titles because the lands covered by the Amended JVA are newly reclaimed or still to be reclaimed. Judicial confirmation of imperfect title requires open, continuous, exclusive and notorious occupation of agricultural lands of the public domain for at least thirty years since June 12, 1945 or earlier. Besides, the deadline for filing applications for judicial confirmation of imperfect title expired on December 31, 1987.^[20]

Lastly, there is a need to resolve immediately the constitutional issue raised in this petition because of the possible transfer at any time by PEA to AMARI of title and ownership to portions of the reclaimed lands. Under the Amended JVA, PEA is obligated to transfer to AMARI the latter’s seventy percent proportionate share in the reclaimed areas as the reclamation progresses. The Amended JVA even allows AMARI to mortgage at any time the **entire** reclaimed area to raise financing for the reclamation project.^[21]

Second issue: whether the petition merits dismissal for failing to observe the principle governing the hierarchy of courts.

PEA and AMARI claim petitioner ignored the judicial hierarchy by seeking relief directly from the Court. The principle of hierarchy of courts applies generally to cases involving factual questions. As it is not a trier of facts, the Court cannot entertain cases involving factual issues. The instant case, however, raises constitutional issues of transcendental importance to the public.^[22] The Court can resolve this case without determining any factual issue related to the case. Also, the instant case is a petition for *mandamus* which falls under the **original** jurisdiction of the Court under Section 5, Article VIII of the Constitution. We resolve to exercise primary jurisdiction over the instant case.

Third issue: whether the petition merits dismissal for non-exhaustion of administrative remedies.

PEA faults petitioner for seeking judicial intervention in compelling PEA to disclose publicly certain information without first asking PEA the needed information. PEA claims petitioner’s direct resort to the Court violates the principle of exhaustion of