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Wilfredo V. Lapitan
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 Division Clerk of Court
 Third Division

MAR 03 2016

Republic of the Philippines
Supreme Court
 Manila

THIRD DIVISION

**PHILIPPINE OVERSEAS
 TELECOMMUNICATIONS
 CORPORATION (POTC),
 PHILIPPINE COMMUNICATIONS
 SATELLITE CORPORATION
 (PHILCOMSAT),**

Petitioners,

G.R. No. 174462

CARPIO, J.,*
 VELASCO, JR., *Chairperson*,
 BRION,**
 PEREZ, and
 REYES, *JJ.*

- versus -

**SANDIGANBAYAN (3rd Division),
 REPUBLIC OF THE PHILIPPINES
 represented by PRESIDENTIAL
 COMMISSION ON GOOD
 GOVERNMENT (PCGG),**

Respondents.

Promulgated:

February 10, 2016

Wilfredo V. Lapitan
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X

DECISION

PEREZ, J.:

Before this Court is a Petition for *Certiorari* filed under Rule 65 of the Rules of Court, seeking to nullify the Resolution¹ of public respondent

* Designated as additional member in lieu of Associate Justice Diosdado M. Peralta per raffle dated February 1, 2016.

** Designated as additional member in lieu of Associate Justice Francis H. Jardeleza per raffle dated February 10, 2016.

¹ *Rollo*, pp. 41-54; penned by Associate Justice Norberto Y. Germaldez with Associate Justices Godofredo L. Legaspi and Efren N. De La Cruz, concurring.

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Sandiganbayan dated 20 October 2005 in Civil Case No. 0009, entitled "*Republic of the Philippines v. Jose L. Africa, Manuel H. Nieto, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Roberto S. Benedicto, Juan Ponce Enrile, Potenciano Ilusorio.*" The assailed Resolution denied petitioners' Omnibus Motion, which sought the lifting of the sequestration order issued by the Presidential Commission on Good Government (PCGG) on Philippine Overseas Telecommunications Corporation (POTC) and Philippine Communications Satellite Corporation (PHILCOMSAT).

The antecedent facts are as follows:

However whoever reads recent Philippine history, the EDSA People Power Revolution in February 1986 is a singular political phenomenon. Unprecedented, unique, unnatural even, the revolution was unarmed. But it succeeded. The unnatural means yielded results natural to a revolution. The vanquished and its acts had to yield to the victors and its reactions. The new President Corazon Cojuangco Aquino, exercising revolutionary government powers issued Executive Order Nos. 1 and 2, creating the PCGG to recover properties amassed by the unseated President Ferdinand Edralin Marcos, Sr., his immediate family, relatives, and cronies, "by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship,"² and to sequester and take over such properties. The present litigation is one of the many offsprings of the revolutionary orders.

Pursuant to Executive Order Nos. 1 and 2, on 14 March 1986, then PCGG Commissioner Ramon A. Diaz issued a letter³ directing Officer-In-Charge Carlos M. Ferrales to:

- a. Sequester and immediately take over POTC and PHILCOMSAT among others, and
- b. To freeze all withdrawals, transfers and/or remittances under any type of deposit accounts, trust accounts or placements.

POTC is a private corporation, which is a main stockholder of PHILCOMSAT, a government-owned and controlled corporation, which was established in 1966 and was granted a legislative telecommunications franchise by virtue of Republic Act No. 5514, as amended by Republic Act

² Executive Order No. 1, Sec. 2(a) (1986).

³ *Rollo*, pp. 61-62.



No. 7949, to establish and operate international satellite communication in the Philippines.

On 22 July 1987, the Office of the Solicitor General (OSG), on behalf of the Republic of the Philippines, filed a Complaint for Reconveyance, Reversion, Accounting and Restitution, and Damages, docketed as Civil Case No. 0009, against Jose L. Africa, Manuel H. Nieto, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Roberto S. Benedicto, Juan Ponce Enrile, and Potenciano Ilusorio (collectively hereinafter referred to as “defendants”). The Complaint averred the following:

- (a) xxx through manipulations and dubious arrangements with officers and members of the Board of the National Development Corporation (NDC), xxx purchased NDC’s shareholdings in the Philippine Communications Satellite Corporation (PHILCOMSAT), xxx under highly unconscionable terms and conditions manifestly disadvantageous to Plaintiff and the Filipino people[;]
- (b) xxx
- (c) illegally manipulated, under the guise of expanding the operations of PHILCOMSAT, the purchase of major shareholdings of Cable and Wireless Limited, a London-based telecommunication company, in Eastern Telecommunications Philippines, Incorporated (ETPI), which shareholdings Defendants Roberto S. Benedicto, Jose L. Africa and Manuel H. Nieto, Jr., by themselves and through corporations namely Polygon Investors and Managers, Inc., Aeroco[m] Investors and Managers Inc. and Universal Molasses Corporation organized by them, were beneficially held for themselves and for Defendants Ferdinand E. Marcos and Imelda R. Marcos;
- (d) illegally effected, xxx contracts involving corporations which they owned and/or controlled, such as: The contract between ETPI and Polygon Investors and Managers, Inc., thereby ensuring effective control of ETPI and advancing Defendants’ scheme to monopolize the telecommunications industry;
- (e) acted in collaboration with each other as dummies, nominees and/or agents of Defendants Ferdinand E. Marcos, Imelda R. Marcos and Ferdinand R. Marcos, Jr. in several corporations, such as, the Mid-Pasig Land Development Corporation and Independent Realty Corporation which, through manipulations by said Defendants, appropriated a substantial portion of the shareholdings in POTC-PHILCOMSAT held by the late Honorio Poblador, Jr., Jose Valdez and Francisco Reyes, thereby further advancing Defendants’ scheme to monopolize the telecommunications industry;
- (f) received improper payments such as bribes, kickbacks or commissions from an overprice in the purchase of equipment for DOMSAT[.]⁴

⁴ Id. at 76-78; Complaint, pp. 14-16.



As alleged in the Complaint, through clever schemes, the wealth that should go to the coffers of the government, which should be deemed acquired for the benefit of the Republic, went to the defendants in their own individual accounts—some, however, through conduits or corporations. The property supposedly acquired illegally was specifically set out in a list appended to the Complaint as Annex A. For instance, Jose L. Africa, one of the defendants, allegedly channelled the ill-gotten wealth in shares of stock in twenty (20) corporations, to wit:

1. Security Bank and Trust Company
2. SBTC Trust, Class A, Account No. 2016
3. SBTC Trust, Class A, Account No. 2017
4. SBTC Trust, Class A, Account No. 2018
5. Oceanic Wireless Network, Inc.
6. Bukidnon Sugar [Milling] Co., Inc.
7. Domestic Satellite Phils., Inc.
8. Northern Lines, Inc.
9. **Philippine Communications Satellite Corp.**
10. Far East Managers and Investors, Inc.
11. Traders Royal Bank
12. **Philippine Overseas Telecommunications Corp.**
13. Eastern Telecommunications Philippines, Inc.
14. Polygon Investors & Managers, Inc.
15. Universal Molasses Corp.
16. Silangan Investors and Managers, Inc.
17. Masters Assets Corp., Class B
18. Gainful Assets Corp., Class B
19. Aerocom Investors and Managers, Inc.
20. Luzon Stevedoring Corp.
21. Amalgamated Motors (Philippines), Inc.
22. Philippine National Construction Corp.
23. Consolidated Tobacco Industries of the Philippines.⁵

Another defendant, Manuel H. Nieto, Jr., allegedly channelled ill-gotten wealth into shares of stock in fifteen (15) corporations, namely:

1. Ozamis Agricultural Development, Inc.
2. Eastern Telecommunications Philippines, Inc.
3. Rang'ay Farms
4. Hacienda San Martin, Inc.
5. Domestic Satellite
6. Bukidnon Sugar Milling Co., Inc.
7. Sunnyday Farms Company Inc.
8. Silangan Investors & Managers, Inc.
9. **Phil. Communications Satellite Corp.**
10. Oceanic Wireless Network, Inc.
11. Integral Factors Corp.
12. **Phil. Overseas Telecommunication[s] Corp.**

⁵ Id. at 89-90. (Emphasis supplied).

13. Aerocom Investors and Managers, Inc.
14. Del Carmen Investments, Inc.
15. Polygon Ventures & Land Development Corp.⁶

As borne by the records,⁷ the following are the stockholdings in POTC of the defendants in Civil Case No. 0009:

1.	(Estate of) Jose L. Africa	1
2.	Manuel H. Nieto, Jr.	107
3.	Ferdinand and Imelda Marcos	0 ⁸
4.	Ferdinand Marcos, Jr.	0 ⁹
5.	(Estate of) Roberto Benedicto	464 (reverted to the Republic)
6.	Juan Ponce Enrile	0 ¹⁰
7.	(Estate of) Potenciano Ilusorio	16 (reverted to the Republic)

Pursuant to its power to sequester and to avoid further dissipation of the sequestered properties, the PCGG appointed a comptroller, who controlled the disbursement of funds of POTC and PHILCOMSAT. At the same time, in a Memorandum¹¹ by the PCGG dated 24 October 2000 to the Bangko Sentral ng Pilipinas (BSP), the PCGG informed the BSP that in all cash withdrawals, transfer of funds, money market placements and disbursements of POTC and PHILCOMSAT, the approval of the PCGG appointed comptroller is required. The Memorandum was to be disseminated to all commercial banks and other non-bank financial institutions performing quasi-banking functions.

From Civil Case No. 0009 sprung other cases: (1) Injunction; (2) Mandamus; and (3) Approval of the Compromise Agreement.

On 1 March 1991, POTC and PHILCOMSAT filed separate complaints for Injunction with the Sandiganbayan against the Republic to nullify and lift the sequestration order issued against them for failure to file the necessary judicial action against them within the period prescribed by the Constitution and to enjoin the PCGG from interfering with their management and operation, which the Sandiganbayan granted on 4 December 1991 through a Resolution.¹²

⁶ Id. at 88. (Emphasis supplied).

⁷ Id. at 263-268; General Information Sheet submitted on 21 October 2005.

⁸ Based on the General Information Sheet submitted on 21 October 2005, Ferdinand and Imelda Marcos are not stockholders.

⁹ Id., Ferdinand Marcos, Jr. is not a stockholder.

¹⁰ Id., Juan Ponce Enrile is not a stockholder.

¹¹ *Rollo*, pp. 93-96.

¹² Id. at 97-112.

On 23 January 1995, however, this Court, in *Republic v. Sandiganbayan (First Division)*, G.R. No. 96073, 240 SCRA 376, January 23, 1995, reversed the Sandiganbayan Resolution and ruled that the filing of Complaint for Reconveyance, Reversion, Accounting and Restitution, and Damages, docketed as Civil Case No. 0009, was filed within the required 6-month period.

Besides the complaint for Injunction, POTC also filed a complaint for Mandamus against the Republic before the Sandiganbayan to compel the PCGG to return POTC's Stock and Transfer Book and Stock Certificate Booklets. The case was docketed as Civil Case No. 0148.

On 13 May 1993, the Sandiganbayan granted the Mandamus, and the Decision became final and executory.

On 28 June 1996, Atty. Potenciano Ilusorio (Ilusorio), one of the defendants in the Civil Case No. 0009, entered into a Compromise Agreement with the Republic. Out of 5,400 or 40% of the shares of stock of POTC in the names of Mid-Pasig Land Development Corporation (MLDC) and Independent Realty Corporation (IRC), the government recovered 4,727 shares or 34.9% of the shares of stock. Ilusorio, on the other hand, retained 673 shares or 5% of the shares of stock.

The Compromise Agreement was approved by the Sandiganbayan in an Order¹³ dated 8 June 1998.

In opposition to the Compromise Agreement, MLDC and IRC filed a Motion to Vacate the Compromise Agreement on 16 August and 2 October 1998, respectively, which was denied by the Sandiganbayan in a Resolution¹⁴ dated 20 December 1999. In the same Resolution, the Sandiganbayan directed the Corporate Secretary of POTC to issue within ten (10) days from receipt thereof, the corresponding Stock Certificate of the government. Pursuant to the Order, 4,727 or 34.9% shares of stock of POTC were transferred in the name of the Republic of the Philippines.

Aggrieved, the PCGG, MLDC, and IRC filed separate petitions before this Court to nullify the Order of the Sandiganbayan approving the Compromise Agreement, which this Court, on 15 June 2005, declared valid in *Republic of the Phils. v. Sandiganbayan*, G.R. No. 141796 and 141804.

¹³ Id. at 113-117.

¹⁴ Id. at 118-143.



The Decision of the Court has long become final and executory. The dispositive portion of the Decision reads:

Having been sealed with court approval, the Compromise Agreement has the force of *res judicata* between the parties and should be complied with in accordance with its terms. Pursuant thereto, Victoria C. de los Reyes, Corporate Secretary of the POTC, transmitted to Mr. Magdangal B. Elma, then Chief Presidential Legal Counsel and Chairman of PCGG, Stock Certificate No. 131 dated January 10, 2000, issued in the name of the Republic of the Philippines, for 4,727 POTC shares. Thus, the Compromise Agreement was partly implemented.

WHEREFORE, the instant petitions are hereby *DISMISSED*.

SO ORDERED.¹⁵ (Citations omitted)

By virtue of the aforesaid Decision in *Republic of the Phils. v. Sandiganbayan*, POTC and PHILCOMSAT filed an Omnibus Motion¹⁶ dated 28 February 2005, which sought to nullify and/or discharge the continued sequestration of POTC and PHILCOMSAT and to declare null and void the PCGG Memorandum to the BSP dated 24 October 2000.

On 20 October 2005, the Sandiganbayan denied POTC and PHILCOMSAT's Omnibus Motion in the assailed Resolution.¹⁷ The Motion for Reconsideration was likewise denied in a Resolution¹⁸ dated 2 August 2006.

Hence, the present Petition, which raises the following assignment of errors.

ASSIGNMENT OF ERRORS

(A)

The public respondent Sandiganbayan erred, and in fact, gravely abused its discretion amounting to lack or excess of jurisdiction, when it ruled that the sequestration of POTC and PHILCOMSAT is still necessary under the present circumstances.

(B)

The public respondent Sandiganbayan erred, and in fact, gravely abused its discretion amounting to lack or excess of jurisdiction, when it ruled that the appointment of a PCGG fiscal agent in POTC and PHILCOMSAT is justified under the present circumstances.

¹⁵ *Republic of the Phils. v. Sandiganbayan*, 499 Phil. 138, 160 (2005).

¹⁶ *Rollo*, pp. 177-199.

¹⁷ *Supra* note 1.

¹⁸ *Rollo*, pp. 55-60.

(C)

The public respondent Sandiganbayan erred, and in fact, [gravely] abused its discretion amounting to lack or excess of jurisdiction, when it ruled that the sequestration order against the petitioners is valid despite clear fatal legal infirmities thereto.¹⁹

Arguments of POTC and PHILCOMSAT

POTC and PHILCOMSAT aver that the Sandiganbayan committed grave abuse of discretion amounting to lack or in excess of jurisdiction by affirming the continued sequestration of the shares, disregarding the final and executory Decision and Resolution of the Sandiganbayan dated 15 June 2005 and 7 September 2005 in *Republic of the Phils. v. Sandiganbayan*, which already ruled on the ownership of the subject shares. In the aforesaid case, the Court upheld the Compromise Agreement between the government and Ilusorio. As a consequence, the government is now the undisputed owner of 34.9% of the shares of stock of the sequestered corporations. Pursuant to the final and executory Decision of the Court, there is no longer need for the continued sequestration of POTC and PHILCOMSAT. POTC and PHILCOMSAT cited the pronouncement of this Court in *Bataan Shipyard and Engineering Co., Inc. (BASECO) v. PCGG*, which held that, as the writ of sequestration is merely a conservatory measure, thus, provisional and temporary in character, the final adjudication of the Court, which finally disposed the sequestered shares, rendered the writ unnecessary.

The POTC and PHILCOMSAT aver that while the PCGG has the power to sequester, such power is merely provisional. The POTC and PHILCOMSAT cite Executive Order No. 1, Section 3, which grants the PCGG the power to take over sequestered properties provisionally, such that, after the sequestered properties have been finally disposed of by the proper authorities, the writ shall be lifted.

Ruling of the Sandiganbayan

On the other hand, as it held, the Sandiganbayan posits that the sequestration of POTC and PHILCOMSAT should not be lifted. The Sandiganbayan ruled in this wise:

Executive Order No. 1 declares that the sequestration of property the acquisition of which is suspect shall last **until the transactions leading to such acquisition can be disposed of by the appropriate authorities.**
xxx.

¹⁹ Id. at 12; Petition for *Certiorari*, p. 10. (Capitalized in the original).



Also, this Court had already ruled in the Resolution dated April 1 2003 that there was *prima facie* evidence that the herein defendants have ill-gotten wealth consisting of funds and properties and that POTC and PHILCOMSAT, among others, were used in acquiring and concealing their ill-gotten wealth.²⁰ (Emphasis supplied)

Hence, the main issue of whether or not the continued sequestration is necessary.

Our Ruling

We rule in favor of POTC and PHILCOMSAT.

I

First, the threshold issue of whether or not the failure to properly implead POTC and PHILCOMSAT as defendants in Civil Case No. 0009 is a fatal jurisdictional error.

Section 26, Article XVIII of the Constitution mandates that if no judicial action has been filed within six (6) months after the ratification of the 1987 Constitution,²¹ the writ of sequestration shall automatically be lifted. In the case at bar, there was no judicial action filed against POTC and PHILCOMSAT. There has never been any appropriate judicial action for reconveyance or recovery ever instituted by the Republic against POTC and PHILCOMSAT.

A perusal of the instant Complaint, docketed as Civil Case No. 0009 dated 22 July 1987, reveals that it was filed against private individuals, namely, Jose L. Africa, Manuel H. Nieto, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Roberto S. Benedicto, Juan Ponce Enrile, Potenciano Ilusorio.²² Nowhere was POTC and PHILCOMSAT impleaded in the Complaint.

The facts surrounding the present case square with those in *PCGG v. Sandiganbayan (PCGG)*.²³ In *PCGG*, the complaint was filed against private individuals, Nieto and Africa, who are shareholders in Aerocom. The Court ruled that the failure to implead Aerocom, the corporation, violated the fundamental principle that a corporation's legal personality is distinct and separate from its stockholders, and that mere annexation to the list of

²⁰ Id. at 51.

²¹ CONSTITUTION, (1987), Art. XVIII, Sec. 26.

²² *Rollo*, p. 63.

²³ 353 Phil. 80 (1998).

corporations does not suffice. In the same manner as *PCGG*, in the case at bar, the Complaint was filed only against POTC and PHILCOMSAT's stockholders, who are private individuals. Similarly, POTC and PHILCOMSAT were also merely annexed to the list of corporations and were not properly impleaded in the case. The suit was against its individual shareholders, herein respondents, Jose L. Africa, Manuel H. Nieto, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Ferdinand R. Marcos, Jr., Roberto S. Benedicto, Juan Ponce Enrile, and Potenciano Ilusorio.

Failure to implead POTC and PHILCOMSAT is a violation of the fundamental principle that a corporation has a legal personality distinct and separate from its stockholders,²⁴ that, the filing of a complaint against a stockholder is not *ipso facto* a complaint against the corporation. Our pronouncement in *Aerocom* is apt:

There is no existing sequestration to talk about in this case, as the writ issued against Aerocom, to repeat, is invalid for reasons hereinbefore stated. ***Ergo, the suit in Civil Case No. 0009 against Mr. Nieto and Mr. Africa as shareholders in Aerocom is not and cannot ipso facto be a suit against the unimpleaded Aerocom itself without violating the fundamental principle that a corporation has a legal personality distinct and separate from its stockholders.*** Such is the ruling laid down in *PCGG v. Interco* reiterated anew in a case of more recent vintage - *Republic v. Sandiganbayan, Sipalay Trading Corp. and Allied Banking Corp.* where this Court, speaking through Mr. Justice Ricardo J. Francisco, hewed to the lone dissent of Mr. Justice Teodoro R. Padilla in the very same *Republic v. Sandiganbayan* case herein invoked by the PCGG, to wit:

xxxx. (Emphasis supplied, citations omitted)

The basic tenets of fair play and principles of justice dictate that a corporation, as a legal entity distinct and separate from its stockholders, must be impleaded as defendants, giving it the opportunity to be heard. The failure to properly implead POTC and PHILCOMSAT not only violates the latter's legal personality, but is repugnant on POTC's and PHILCOMSAT's right to due process. "[F]ailure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would in effect be disregarding their distinct and separate personality without a hearing."²⁵ As already settled, a suit against individual stockholders is not a suit against the corporation.

²⁴ Id. at 91.

²⁵ Id. at 92, citing *Republic v. Sandiganbayan*, G.R. Nos. 112708-09, 255 SCRA 438, 494, March 29, 1996.

Proceeding from the foregoing, as POTC and PHILCOMSAT were not impleaded, there is no longer any existing sequestration on POTC and PHILCOMSAT.²⁶ The sequestration order over POTC and PHILCOMSAT was automatically lifted six (6) months after the ratification of the 1987 Constitution on 2 February 1987 for failure to implead POTC and PHILCOMSAT in Civil Case No. 0009 before the Sandiganbayan or before any court for that matter.²⁷ To recite Section 26, Article XVIII of the Constitution, if no judicial action has been filed within six (6) months after the ratification of the 1987 Constitution, the writ of sequestration shall automatically be lifted. Note must be made of the fact that we do not here touch our previous holding that Civil Case No. 0009 was filed within the 6-month period. We now say that such notwithstanding, and as shown by the facts on record, the POTC and PHILCOMSAT were not impleaded in the Civil Case.

II

For one more reason should this Petition be granted. This concerns the shares in petitioner corporations of Potenciano Ilusorio covered by the Compromise Agreement entered into between Ilusorio and PCGG, which was upheld by the Court in *Republic of the Phils. v. Sandiganbayan*, the decision in which is now final and executory.

a. Sequestration is merely provisional

To effectively recover all ill-gotten wealth amassed by former President Marcos and his cronies, the President granted the PCGG, among others, power and authority to sequester, provisionally take over or freeze suspected ill-gotten wealth. The subject of the present case is the extent of PCGG's power to sequester.

Sequestration is the means to place or cause to be placed under the PCGG's possession or control properties, building or office, including business enterprises and entities, for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving the same until it can be determined through appropriate judicial proceedings, whether the property was in truth "ill-gotten."²⁸

However, the power of the PCGG to sequester is merely provisional.²⁹ None other than Executive Order No. 1, Section 3(c) expressly provides for the provisional nature of sequestration, to wit:

²⁶ Id.

²⁷ Id.

²⁸ *Bataan Shipyard & Engineering Co., Inc. (BASECO) v. PCGG*, 234 Phil. 180, 207 (1987).

²⁹ Id.

c) To **provisionally** take over in the public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities.³⁰ (Emphasis supplied).

In the notable case of *Bataan Shipyard & Engineering Co., Inc. (BASECO) v. PCGG*,³¹ the Court clearly pronounced that sequestration is provisional, that such sequestration shall last “until the transactions leading to such acquisition xxx can be disposed of by the appropriate authorities.”³²

Sequestration is akin to the provisional remedy of preliminary attachment, or receivership.³³ Similarly, in attachment, the property of the defendant is seized as a security for the satisfaction of any judgment that may be obtained, and not disposed of, or dissipated, or lost intentionally or otherwise, pending litigation.³⁴ In a receivership, the property is placed in the possession and control of a receiver appointed by the court, who shall conserve the property pending final determination of ownership or right of possession of the parties.³⁵ In sequestration, the same principle holds true. The sequestered properties are placed under the control of the PCGG, subject to the final determination of whether the property was in truth ill-gotten. We reiterate the disquisition of this Court in *BASECO*:

By the clear terms of the law, the power of the PCGG to *sequester property* claimed to be “ill-gotten” means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including “business enterprises and entities,” — for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same — **until it can be determined, through appropriate judicial proceedings, whether the property was in truth “ill-gotten,”** *i.e.*, acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. xxx.³⁶ (Emphasis supplied, citations omitted)

³⁰ Executive Order No. 1, Section 3(c) (1986).
³¹ Supra note 28.
³² Supra note 30.
³³ Supra note 28 at 211.
³⁴ Id., citing Rule 57, Rules of Court.
³⁵ Id., citing Rule 59, Rules of Court.
³⁶ Id. at 207.

Sequestration is a conservatory writ,³⁷ which purpose is to preserve properties in *custodia legis*, lest the dissipation and concealment of the “ill-gotten” wealth the former President Marcos and his allies may resort to, pending the final disposition of the properties.³⁸ It is to prevent the disappearance or dissipation pending adjudgment of whether the acquisition thereof by the apparent owner was attended by some vitiating anomaly or attended by some illegal means.³⁹ Thus by no means is it permanent in character. Upon the final disposition of the sequestered properties, the sequestration is rendered *functus officio*.

*b. Ownership of the sequestered properties
have already been finally adjudged*

As sequestration is a provisional remedy, a transitional state of affairs, in order to prevent the disappearance or dissipation of the property pending the final disposition of the property, the ultimate purpose of sequestration is to bring an intended permanent effect while the PCGG investigates in pursuit of a judicial proceeding — to dispose of the sequestered properties. Tersely put, the ultimate purpose of sequestration is to recover the sequestered properties in favor of the government in case they turn out to be ill-gotten. This function to dispose of the property is reserved to the Sandiganbayan. Until the Sandiganbayan determines whether the property was in truth and in fact “ill-gotten”, the sequestration shall subsist. In case of a finding that the sequestered properties are ill-gotten, the property shall be returned to the lawful owner, to the people, through the government; otherwise, the sequestered property shall be returned to the previous owner.

Clearly, the purpose of sequestration is to take control until the property is finally disposed of by the proper authorities. However, when such property has already been disposed of, such that the owner has already been adjudged by the Court, must the sequestration still subsist?

In the case at bar, the 34.9% ownership of the sequestered property has been finally adjudged; the ultimate purpose of sequestration was already accomplished when the ownership thereof was adjudged to the government by this Court in *Republic of the Phils. v. Sandiganbayan*. Moreover, the said shares in the ownership of the sequestered properties have reverted to the Government. The government now owns 4,727 shares or 34.9% of the sequestered corporations.

³⁷ Id.
³⁸ Id. at 208.
³⁹ Id. at 209.

As the sequestered property has already been disposed, the ultimate purpose of sequestration has already been attained; the evil sought to be prevented is no longer present. Evidently, the sequestered property which was already returned to the government cannot anymore be dissipated or concealed. Otherwise stated, the sequestered properties need no longer be subject of reversion proceedings because they have already reverted back to the government. Thus, as the sequestration is rendered *functus officio*, it is merely ministerial upon the Sandiganbayan to lift the same.

In fact, on 4 November 2010, the Department of Justice (DOJ), which has supervision over the PCGG, acknowledged the need to lift the writ of sequestration in the DOJ Memorandum LML-M-4K10-368.⁴⁰ The pertinent portion of the DOJ Memorandum reads:

It bears stressing that the PCGG, which is now under the administrative supervision of this Department pursuant to Executive Order No. 643 s. 2007, has lost “authority” over the shares of the Republic in POTC. This is due to the fact that in PCGG Resolution No. 2007-024 dated 4 September 2007, it was resolved that the 4,727 shares of stock of POTC, which is under the name of the Republic of the Philippines, be now transferred to the Department of Finance (DOF) for disposition. xxx. (Boldface omitted)

xxxx

In view of the foregoing, you are hereby directed to immediately implement PCGG Resolution No. 2007-024 by immediately transferring to the DOF, for its proper disposition, POTC Stock Certificate No. 131. **Corollary to this is the lifting of the sequestration orders, if any, that covers the 4,727 shares of stock of the Republic in POTC.** xxx.⁴¹ (Emphasis supplied)

Quite telling is this Court’s unequivocal pronouncement in a rather recent case of *Palm Avenue Holding Co., Inc. v. Sandiganbayan*,⁴² which involved very similar factual antecedents to those pertaining to petitioners POTC and PHILCOMSAT.

“Section 26, Article XVIII of the 1987 Constitution provides:

xxxx

A sequestration or freeze order shall be issued only upon showing of a *prima facie* case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before

⁴⁰ *Rollo*, pp. 865-866.

⁴¹ *Id.*

⁴² G.R. No. 173082, 6 August 2014, 732 SCRA 156; penned by Associate Justice Diosdado M. Peralta.



the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.

The aforesaid provision mandates the Republic to file the corresponding judicial action or proceedings within a six-month period (from its ratification on February 2, 1987) in order to maintain sequestration, non-compliance with which would result in the automatic lifting of the sequestration order. The Court's ruling in *Presidential Commission on Good Government v. Sandiganbayan*, which remains good law, reiterates the necessity of the Republic to actually implead corporations as defendants in the complaint, out of recognition for their distinct and separate personalities, failure to do so would necessarily be denying such entities their right to due process. Here, the writ of sequestration issued against the assets of the Palm Companies is not valid because the suit in Civil Case No. 0035 against Benjamin Romualdez as shareholder in the Palm Companies is not a suit against the latter. The Court has held, contrary to the assailed *Sandiganbayan* Resolution in G.R. No. 173082, that failure to implead these corporations as defendants and merely annexing a list of such corporations to the complaints is a violation of their right to due process for it would be, in effect, disregarding their distinct and separate personality without a hearing. Here, the Palm Companies were merely mentioned as Item Nos. 47 and 48, Annex A of the Complaint, as among the corporations where defendant Romualdez owns shares of stocks. Furthermore, while the writ of sequestration was issued on October 27, 1986, the Palm Companies were impleaded in the case only in 1997, or already a decade from the ratification of the Constitution in 1987, way beyond the prescribed period.

The argument that the beneficial owner of these corporations was, anyway, impleaded as party-defendant can only be interpreted as a tacit admission of the failure to file the corresponding judicial action against said corporations pursuant to the constitutional mandate. Whether or not the impleaded defendant in Civil Case No. 0035 is indeed the beneficial owner of the Palm Companies is a matter which the PCGG merely assumes and still has to prove in said case.

The sequestration order issued against the Palm Companies is therefore deemed automatically lifted due to the failure of the Republic to commence the proper judicial action or to implead them therein within the period under the Constitution. However, the lifting of the writ of sequestration will not necessarily be fatal to the main case since the same does not *ipso facto* mean that the sequestered properties are, in fact, not illgotten. The effect of the lifting of the sequestration will merely be the termination of the government's role as conservator. In other words, the PCGG may no longer exercise administrative or housekeeping powers, and its nominees may no longer vote the



sequestered shares to enable them to sit in the corporate board of the subject company.⁴³ (Emphasis supplied, citations omitted)

The glaring similarity in the circumstances attendant in the case involving Palm Companies with the situation of petitioners POTC and PHILCOMSAT compels us to rule in this case as we did in *Palm* case.

On a final note, while sequestration is the means to revert the amassed ill-gotten wealth back to the coffers of our government, we must still safeguard the protection of property rights from overzealousness. Sequestration as statutorily and constitutionally recognized is not permanent. It must be lifted when the law and proven facts warrant, or when the purpose has been accomplished.


WHEREFORE, the Petition is **GRANTED**. The assailed Resolution issued by the Sandiganbayan dated 20 October 2005 and 2 August 2006 are **REVERSED**. The writ of sequestration issued against petitioner POTC and PHILCOMSAT is hereby declared **LIFTED** six (6) months after the ratification of the 1987 Constitution on 2 February 1987.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice


WE CONCUR:



ANTONIO T. CARPIO
Associate Justice

⁴³

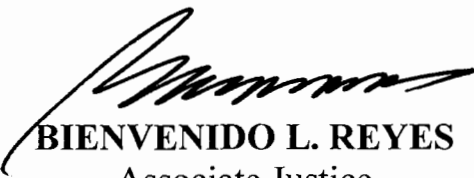
Id. at 163-165.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



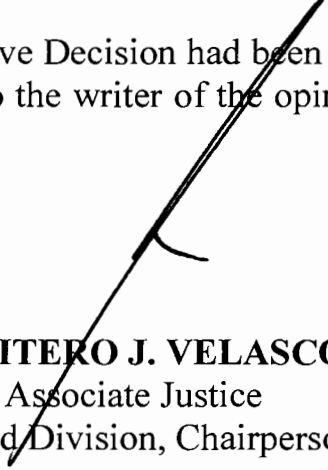
ARTURO D. BRION
Associate Justice



BIENVENIDO L. REYES
Associate Justice

ATTESTATION

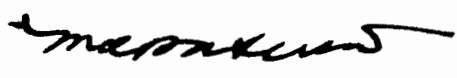
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



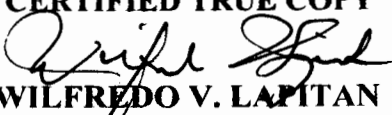
PRESBITERO J. VELASCO, JR.
Associate Justice
Third Division, Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division

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