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G.R. No 208788 – QUEZON CITY GOVERNMENT represented by HONORABLE HERBERT M. BASUTISTA, in his capacity as CITY MAYOR OF QUEZON CITY, and TOMASITO L. CRUZ, in his capacity as the CITY PLANNING AND DEVELOPMENT OFFICER AND ZONING OFFICIAL OF QUEZON CITY, Petitioners, **v. MANILA SEEDLING BANK FOUNDATION, INC., represented by its President and Chairman LUCITO M. BERTOL,** Respondent.

G.R. No. 228284 – MANILA SEEDLING BANK FOUNDATION, INC., represented by its President and Chairman LEODARDO D. LIGERALDE, Petitioner, **v. QUEZON CITY GOVERNMENT represented by HON. HERBERT BAUSTISTA, in his capacity as CITY MAYOR OF QUEZON CITY, GEN. ELMO SAN DIEGO, in his capacity as Head, Department of Public Order and Safety (DPOS), ROGER CUARESMA, and CAMERAN, M.J., and other members of the DPOS,** Respondents.

Promulgated:

July 23, 2024

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CONCURRING and DISSENTING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* in ruling in favor of Manila Seedling Bank Foundation Inc. (Manila Seedling). I write this Opinion to highlight Manila Seedling's rights over the seven-hectare land reserved under Presidential Proclamation No. 1670[1] (subject property), which the local government of Quezon City should have respected in the enactment and implementation of its zoning ordinances and in effecting its duty to collect local taxes.

Brief Review of the Facts

On September 19, 1977, Presidential Proclamation No. 1670 was issued reserving for Manila Seedling a seven-hectare land, presently owned by the National Housing Authority (NHA), and located at Diliman, Quezon City, for use in its operation and projects. The subject property was excluded from the

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[1] Excluding from the Operation of Proclamation No. 481, dated October 24, 1968, which Established the National Government Center Site, Situated at Diliman, Quezon City, Certain Parcels of Land Embraced Therein, and Reserving the Same for the Purposes of the Manila Seedling Bank Foundation, September 19, 1977.

operation of Proclamation No. 481[2] dated October 24, 1968, which established the National Government Center Site.[3]

In 2000, the City Council of Quezon City enacted Ordinance No. SP-918, series of 2000 or the Quezon City Zoning Ordinance. It was amended in 2003 by Ordinance No. SP-1369, series of 2003 (Zoning Ordinance).[4] The Zoning Ordinance classified Manila Seedling's seven-hectare property as institutional and commercial zones. Further, the Zoning Ordinance required persons applying for a business permit to secure a locational clearance from the Zoning Official for conforming uses and a certificate of non-conformance for non-conforming uses prior to the issuance of a business or license permit.[5]

Manila Seedling had been issued a Certificate of Non-Conformance for its business permit until December 2011. However, on January 5, 2012, the Quezon City Government refused to renew Manila Seedling's locational clearance. In turn, Manila Seedling failed to renew its business permit in 2012.[6]

On February 23, 2012, Manila Seedling filed a Petition (For Prohibition with Application for Preliminary Mandatory Injunction and Prohibitory Injunction and for a Temporary Restraining Order [TRO]) before the Regional Trial Court (RTC), Quezon City, Branch 96, against the Quezon City Government.[7]

The RTC, in its Decision[8] dated June 18, 2013, granted Manila Seedling's petition and directed the Quezon City Government to permanently desist from enforcing or implementing the Zoning Ordinance to the property under Manila Seedling's usufruct and to issue a locational clearance and business permit in favor of Manila Seedling.[9]

The Quezon City Government filed the instant petition, docketed as G.R. No. 208788, claiming that Manila Seedling has no legal capacity to sue, considering that its Certificate of Registration with the Securities and Exchange Commission (SEC) had long been revoked since 2002.[10]

Meanwhile, on July 3, 2012, Manila Seedling received a notice from the City Treasurer informing it that the subject property had been sold at public auction for delinquent real property taxes, and that for it to redeem the same, the amount of PHP 40,980,986.24 had to be paid on or before July 7,

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2 Excluding from the Operation of Proclamation No. 42, dated July 5, 1954, which Established the Quezon Memorial Park, Situated at Diliman, Quezon City, Certain Parcels of the Land Embraced Therein and Reserving the Same for National Government Center Site Purposes.

3 *Ponencia,* p. 3.

4 *Id.*

5 *Id.* at 4.

6 *Id.* at 5.

7 *Id.*

8 Branch 96, RTC of Quezon City in Special Civil Action No. Q-12-70830, penned by Presiding Judge Afable E. Cajigal, *rollo* (G.R. No. 208788), pp. 11–23.

9 *Id.* at 23.

10 *Ponencia*, p. 7.

2012. Manila Seedling sent a reply, primarily asserting that, as a usufructuary, it is exempt from paying real property taxes on the subject property.[11]

On July 10, 2012, Manila Seedling was served a letter signed by then Mayor Herbert M. Bautista, informing it that due to its failure to redeem the property, ownership thereof was transferred to the Quezon City Government. Immediately upon receipt of the letter, several police officers forcibly took possession and control of the premises.[12]

The Quezon City Government did not respond to Manila Seedling's letter which asserted that nothing in the law allows the former to forcibly enter and take over the premises.[13] This prompted Manila Seedling to file a Petition (for Prohibition and Injunction with Damages and with Application for a Writ of Preliminary Prohibitory and Mandatory Injunction and a Temporary Restraining Order) with the RTC of Quezon City, Branch 216 on July 12, 2012.[14]

The RTC[15] dismissed the above petition of Manila Seedling based on lack of personality to sue, on the reasoning that Manila Seedling's registration had been revoked since 2002. The Court of Appeals[16] affirmed the RTC Order dated December 22, 2014 and denied Manila Seedling's Motion for Reconsideration.[17] Thus, Manila Seedling filed the instant petition, docketed as G.R. No. 228284, where Manila Seedling claims that it had corporate personality at the time of filing its petition with the RTC because the earlier order of revocation was not final; and was, in fact, set aside by the SEC, which retroacts to the date of such revocation, as if Manila Seedling never lost its corporate personality.[18]

In G.R. No. 208788, the *ponencia* grants Manila Seedling's petition and declares null and void the relevant portions of the Zoning Ordinance insofar as it infringes upon Manila Seedling's usufructuary rights. However, in G.R. No. 228284, while the *ponencia* finds illegal the Quezon City Government's taking of the subject property, it dismisses Manila Seedling's petition on the ground of mootness.[19]

For the reasons explained below, I do not fully subscribe to this ruling. In view of the usufruct granted to Manila Seedling under Proclamation No. 1670, Manila Seedling has the right to be restored in the possession and use

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11 *Id.*
12 *Id.* at 8.
13 *Id.*
14 *Id.*
15 *See* Order dated December 22, 2014 of Branch 216, RTC of Quezon City in Special Civil Case No. Q-12-71638, penned by Presiding Judge Alfonso C Ruiz II, *rollo* (G.R. No. 228284), pp. 177–179.
16 *See* Decision dated June 16, 2016 and Resolution dated November 17, 2016 in CA-G.R. SP No. 139984, both penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Pedro B. Corales, *id.* at 40–51, 56–57, respectively.
17 *Ponencia*, p. 10.
18 *Id.* at 11.
19 *Id.* at 38.

of the subject property or indemnified for damages suffered as a result of the dispossession.

Manila Seedling has legal capacity to sue.

Preliminarily, I join the *ponencia*'s ruling that the Quezon City Government is estopped from raising as an issue Manila Seedling's corporate personality.

It is a settled rule in our jurisdiction that, by virtue of the doctrine of estoppel, a party cannot challenge a corporation's personality or legal capacity to sue when the former has already acknowledged the same by entering into a contract with it and deriving benefits therefrom.[20]

In this case, the Quezon City Government had long recognized, treated, dealt, and transacted with Manila Seedling as a corporate entity. This is evident from the bills and receipts for business license fees, business clearances and permits, as well as notices in relation to real property taxes, all issued by the Quezon City Government in the name of Manila Seedling as a corporate entity, **and all issued after the SEC's revocation of its registration**. Thus, the Quezon City Government's prior recognition of Manila Seedling's corporate personality or legal capacity to sue must estop it from now challenging the same.

The rationale for the doctrine of estoppel is explained by jurisprudence in this wise:

> The doctrine of corporation by estoppel is founded on principles of equity and is designed to prevent injustice and unfairness. It applies when a non-existent corporation enters into contracts or dealings with third persons. In which case, the person who has contracted or otherwise dealt with the non-existent corporation is estopped to deny the latter's legal existence in any action leading out of or involving such contract or dealing. While the doctrine is generally applied to protect the sanctity of dealings with the public, nothing prevents its application in the reverse, in fact the very wording of the law which sets forth the doctrine of corporation by estoppel permits such interpretation. Such that a person who has assumed an obligation in favor of a non-existent corporation, having transacted with the latter as if it was duly incorporated, is prevented from denying the existence of the latter to avoid the enforcement of the contract.[21] (Citations omitted)

The Quezon City Government claims that estoppel cannot apply because it only discovered or confirmed the revocation of Manila Seedling's registration in 2013, upon receipt of the SEC Letter stating that Manila

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[20] *Magna Ready Mix Concrete Corp. v. Andersen Bjornstad Kane Jacobs, Inc.*, G.R. No. 196158, January 20, 2021, 969 SCRA 545, 562–563 [Per J. Hernando, Third Division]; *See also Merrill Lynch Futures, Inc. v. Court of Appeals*, 286 Phil. 988, 1004 (1992) [Per C.J. Narvasa, Second Division].

[21] *The Missionary Sisters of Our Lady of Fatima v. Alzona*, 838 Phil. 283, 295–296 (2018) [Per J. A. Reyes, Jr., Second Division].

Seedling's registration was revoked in 2002. However, as recognized by the CA itself in the assailed Decision, the revocation of Manila Seedling's registration was published in a newspaper of general circulation. This publication served as notice to the public of Manila Seedling's corporate status. With this "notice to the public," the Quezon City Government may not hide behind the SEC Letter to excuse its previous recognition and dealings with Manila Seedling as a corporation, and now be allowed to assail the latter's juridical personality and capacity to act as a corporation.

However, contrary to the *ponencia*,[22] I agree with Manila Seedling's averment that the reinstatement of its registration retroacts to the date of the revocation of said registration. In other words, the SEC Order that was issued in 2015 setting aside the revocation has effectively cured the defect in Manila Seedling's legal personality at the time of the filing of its petitions with the RTC.

Consideration must be given to the established fact that, pending the final resolution of these cases, the SEC granted Manila Seedling an extension to file a petition to lift or set aside the Order of Revocation. Specifically, in a letter dated January 3, 2014, the SEC granted Manila Seedling two years, reckoned from December 31, 2013, to file a petition to set aside the revocation, *viz.*:

> Gentlemen:
>
> This refers to your letter dated November 6, 2013, requesting clarification on the revoked status for non-compliance with reportorial requirements.
>
> Verification of the records on file with this Commission shows that the certificate of registration of MANILA SEEDLING BANK FOUNDATION, INC., registered on September 6, 1977 under SEC Reg. No. 75473, was revoked by the Commission by virtue of SEC Order dated December 29, 2001, published in Manila Standard on January 21, 2002, for non-compliance with reportorial requirements. SEC Order dated December 29, 2001 was published in a newspaper of general circulation, which is sufficient notice to the corporation.
>
> On the other hand, please be informed that the Commission En Banc, in its meeting of November 21, 2013, resolved to grant all covered corporations a period of two (2) years from December 31, 2013 until [December] 31, 2015 within which to file their petitions with the Commission to set aside the order of their revocation. Upon publication of the circular providing for the procedure regarding the same, you may file the petition to reinstate the registration status of your corporation.
>
> Please coordinate directly with Compliance Monitoring Division of the Department located at the Ground Floor, SEC Bldg., EDSA Greenhills, Mandaluyong City.[23]

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22 *See ponencia*, p. 18.

23 *Rollo* (G.R. No. 228284), p. 286, Manila Seedling's Memorandum dated August 28, 2017.

In compliance with the SEC directive, Manila Seedling filed its petition on February 4, 2015. On October 14, 2015, the SEC issued an Order granting Manila Seedling's petition and setting aside the Order of Revocation, *viz.*:

> **WHEREFORE,** finding the submitted documents sufficient to establish petitioner's intent to continue as a juridical entity, the Commission's Order dated 28 December 2001, revoking the [Certificate] of Incorporation of **MANILA SEEDLING BANK [FOUNDATION], INC.,** is hereby **SET ASIDE.**
>
> Further, the approval of the petition to set aside order of revocation shall be subject to the findings of the Commission on Audit (COA) against the petitioner.
>
> Finally, petitioner is warned that if it commits a similar [violation] on reportorial requirements, the Commission shall be [constrained] to impose a heavier penalty.
>
> **SO ORDERED.**[24] (Emphasis in the original)

From the tenor of the foregoing SEC Order, the lifting/setting aside of the earlier Order of Revocation reinstated Manila Seedling's registration. Such reinstatement retroacts to the date of the revocation because it did not result in the creation of a new corporation but in the continuation of Manila Seedling's juridical personality. In other words, the reinstatement of Manila Seedling's registration cured or rectified the "defect" in its registration at the time of filing the petitions with the trial court, or as if no revocation took place at all.

In SEC Opinion NO. 06-06,[25] an inquiry was brought before the SEC as to the effects of lifting the order of revocation. In the said Opinion, the SEC General Counsel said:

> If the revocation was issued due to non-compliance by the corporation of the reportorial requirements of the Commission, the revoked corporation has three (3) years within which to file a petition to lift the order of revocation with the Commission. However, the filing of the petition should not be beyond three years from the date of revocation. This three-year period is based on the three-year winding up period for dissolved corporations under Section 122 of the Corporation Code. *Generally, the effect of the reinstatement of the corporation is that it relates back to the date of dissolution [or revocation] as if the dissolution [or revocation] had never occurred.*[26] (Emphasis supplied, citations omitted)

This was reiterated by the SEC General Counsel in a subsequent opinion on the same issue,[27] *viz.*:

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24 *Id.*

25 Sale of Shares of Stock of a revoked Corporation, January 31, 2006.

26 *Id.* at 2–3.

27 Effects of Lifting the Order of Revocation, SEC OGC Opinion No. 13-08, August 22, 2013.

Section 122 of the Corporation Code provides:

> *"Sec. 122. Corporate liquidation.— Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner,* shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, *but not for the purpose of continuing the business for which it was established.*["] . . .

The Commission, however, in SEC Opinion No. 06-06, citing Fletcher Cyclopedia Corporation, opined on the effects of setting aside the Order of Revocation, to wit:

> *"Generally, the effect of the reinstatement of the corporation is that it relates back to the date of dissolution [or revocation] as if the dissolution [or revocation] had never occurred."*

Moreover, Fletcher in his book asserts that "the reinstatement has the effect of ratifying and confirming all acts and proceedings of the corporation's officers, directors, and stockholders which would have been legal and valid but for the dissolution."

Finally, in a similar case in which a petitioner asked the Commission to lift the order of revocation, the Commission reiterated Fletcher and cited SEC Opinion No. 06-06 on the effect of the reinstatement of the corporation.[28] (Emphasis supplied, citations omitted)

Therefore, with the reinstatement of Manila Seedling's registration during the pendency of the consolidated cases, Manila Seedling is deemed to have had juridical personality and legal capacity to sue at the time of the filing of its petitions with the trial court.

With the issue on Manila Seedling's personality settled, I join the *ponencia* in granting Manila Seedling's petition in G.R. No. 208788. The Zoning Ordinance is invalid for being contrary to Proclamation No. 1670, and thus cannot be made to apply to the subject property until the termination of the usufruct granted to Manila Seedling. By classifying the subject property as commercial and institutional zones, the Zoning Ordinance impaired Manila Seedling's use of the property for its purpose and projects, as mandated under Proclamation No. 1670.

Likewise, in G.R. No 228284, I concur that the Quezon City Government's taking, and subsequent possession of the subject property, is illegal as the public auction sale thereof is void. Even assuming that the public

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28 *Id.* at 2.

auction sale is valid, and the ownership of the subject property is transferred to the Quezon City Government, Manila Seedling, as a usufructuary, should remain in possession of the subject property until the termination of the usufruct. Consequently, Manila Seedling should be restored in possession of the subject property, and if restoration is impracticable, the case should be remanded to the trial court to determine Manila Seedling's entitlement to damages, if any.

I expound.

The Quezon City government erred in applying the Zoning Ordinance to the subject property in view of Proclamation No. 1670.

I agree with the *ponencia* in upholding the ruling of the RTC that the Zoning Ordinance cannot be applied to the subject property in view of the usufruct granted to Manila Seedling under Proclamation No. 1670.

The Court has held that zoning classification is an exercise by the local government of police power, and not the power of eminent domain.[29] A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribes, defines, and apportions a given political subdivision into specific land uses as present and future projection of needs.[30] As an exercise of police power, the same is, therefore, considered plenary and flows from the recognition that the welfare of the people is the supreme law.[31] A zoning ordinance, however, must conform to the tests of a valid ordinance, as well, in that it must be within the corporate powers of the local government unit to enact and must be passed according to the procedure prescribed by law. Furthermore, it must also conform to the following substantive requirements: (1) it must not contravene the Constitution or any statute; (2) it must not be unfair or oppressive; (3) it must not be partial or discriminatory; (4) it must not prohibit but may regulate trade; (5) it must be general and consistent with public policy; and (6) it must not be unreasonable.[32]

Here, the Zoning Ordinance clearly contravenes Proclamation No. 1670 which grants Manila Seedling's usufructuary rights. To my mind, this is violative of the foregoing requirement that an ordinance must not contravene any statute.

Manila Seedling is an environmental organization founded in 1977. It was organized primarily to produce tree seedlings, vegetable seeds, and forest

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29 *Marcelo v. Samahang Magsasaka ng Barangay San Mariano*, 863 Phil. 49, 73 (2019) [Per J. Reyes, Jr., Second Division].

30 *Id.*

31 *See Social Justice Society (SJS) v. Hon. Atienza, Jr.*, 568 Phil. 658, 700 (2008) [Per J. Corona, First Division].

32 *Id.*

and fruit bearing trees for reforestation and agro-forestry development. In recognition of the importance of Manila Seedling's activities in the furtherance of the government's reforestation program,[33] Proclamation No. 1670 dated September 19, 1977 was issued by then President Ferdinand E. Marcos (President Marcos), granting Manila Seedling the usufruct over an area of seven hectares of the land located in the National Government Center Site in Diliman, Quezon City.

Proclamation No. 1670 reads:

> Pursuant to the powers vested in me by the Constitution and the laws of the Philippines, I, FERDINAND E. MARCOS, President of the Philippines, do hereby exclude from the operation of Proclamation No. 481, dated October 24, 1968, which established the National Government Center Site, certain parcels of land embraced therein and reserving the same for the Manila Seedling Bank Foundation, Inc., *for use in its operation and projects*, subject to private rights if any there be, and to future survey, under the administration of the Foundation.
>
> *This parcel of land, which shall embrace 7 hectares*, shall be determined by the future survey based on the technical descriptions found in Proclamation No. 481, and most particularly on the original survey of the area, dated July 1910 to June 1911, and on the subdivision survey, dated April 19-25, 1968.
>
> IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.
>
> Done in the City of Manila, this 19th day of September, in the year of Our Lord, nineteen hundred and seventy-seven. (Emphasis supplied)

Pursuant to Proclamation No. 1670, a contract between the National Government and Manila Seedling was created.[34]

It is well-settled that "during the past dictatorship, every presidential issuance, by whatever name it was called, had the force and effect of law because it came from President Marcos."[35] Thus, in cases involving the binding effect of presidential issuances issued during the Martial Law regime, the Court recognized that these carry the same force and effect as any statute, by virtue of the transitory provision in Section 3(2), Article XVII of the 1973

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33 *See* Remarks of His Excellency Ferdinand E. Marcos President of the Philippines At the inauguration of the Manila Seedling Bank Foundation Inc., *available at* https://www.officialgazette.gov.ph/1977/09/19/remarks-of-president-marcos-at-the-inauguration-of-the-manila-seedling-bank-foundation-inc/.

34 *Rollo* (G.R No. 208788), p. 16, RTC Decision dated June 18, 2013.

35 *Ass'n. of Small Landowners in the Phils., Inc. v. Hon. Secretary of Agrarian Reform*, 256 Phil. 777, 802 (1989) [Per J. Cruz, *En Banc*].

Constitution[36] *vis-à-vis* Section 3, Article XVIII of the 1987 Constitution.[37] This includes proclamations, such as in the present case, reserving a certain portion of public land for a specific purpose.[38]

Hence, when Proclamation No. 1670 reserved certain portions of government land for Manila Seedling "for use in its operation and projects," that reservation must be respected. The Zoning Ordinance of Quezon City cannot effectively amend or repeal Proclamation No. 1670—a statute—by reclassifying the purpose of the subject property.

Since September 1977, Manila Seedling has been in possession of the subject property where the Environmental Center was built. The Environmental Center has been used by Manila Seedling as a plant nursery and venue for garden centers, pet shops, and cut flower center. Manila Seedling also uses the subject property in offering services such as tree pruning, tree balling and relocation, disease treatment, tree farming, greenhouse construction and maintenance, and plant clinics; and seminars and workshops on reforestation, environmental preservation, waste disposal management, composting, and others. These uses are far from those which are undertaken within a "metropolitan commercial zone," as reclassified in the Zoning Ordinance.

I further note that the case *rollo* does not include a copy of the Zoning Ordinance. However, in G.R. No. 208788, the trial court, in its Decision dated June 18, 2013, cited portions thereof.

According to the trial court, Section 1, Article III of the 2000 Ordinance classified as a metropolitan commercial zone that area bounded by North Avenue, Agham Road, Quezon Blvd. and EDSA (except for areas identified as institutional zones), which includes the entire seven-hectare property under Manila Seedling's usufruct.[39] The trial court further noted that Section 1 of the 2000 Zoning Ordinance provided that a metropolitan commercial zone district is "*characterized by heavy commercial developments and multi-level commercial structures, including trade, service and entertainment on a metropolitan (regional) scale of operations as well as miscellaneous support services; with permitted light industrial activities.*"[40] Additionally, Section 1(i), Art. VI of the 2000 Zoning Ordinance requires that the owner of a non-conforming use to program the phase-out and relocation

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36 SEC. 3. . . .
(2) All proclamations, orders, decrees, instructions, and acts promulgated, issued, or done by the incumbent President shall be part of the law of the land, and shall remain valid, legal, binding, and effective even after the lifting of martial law or the ratification of this Constitution, unless modified, revoked, or superseded by subsequent proclamations, orders, decrees, instructions, or other acts of the incumbent President, or unless expressly and explicitly modified or repealed by the regular National Assembly.

37 SEC. 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

38 *See Land Bank of the Philippines v. Estate of J. Amado Araneta*, 681 Phil. 315 (2012) [Per J. Velasco, Jr., Third Division].

39 *See rollo* (G.R. No. 208788), pp. 12, 16, RTC Decision dated June 18, 2013.

40 *Id.* at 16. (Emphasis supplied)

of the non-conforming use within 10 years from the effectivity of the ordinance (sometime in 2010).

I submit that the above reclassification of zones affected Manila Seedling <u>in a manner that exceeds mere regulation</u>.

To be sure, local governments may be considered as having properly exercised their police power only if the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require its exercise, and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. In short, there must be a concurrence of a lawful subject and a lawful method.[41]

Thus, in *Social Justice Society (SJS) v. Hon. Atienza, Jr.*,[42] (*Social Justice Society*) the Court upheld the validity of a zoning ordinance which reclassified the area where the oil depots were situated in Manila from industrial to commercial, on a clear finding that said ordinance was enacted "for the purpose of promoting sound urban planning, ensuring health, public safety and general welfare" of the residents of Manila. The Court held that the *Sanggunian* there was impelled to take measures to protect the residents of Manila from catastrophic devastation in case of a terrorist attack on the Pandacan Terminals.[43]

Furthermore, the Court in *Social Justice Society* found that the zoning ordinance was intended to safeguard the rights to life, security, and safety of all the inhabitants of Manila and not just of a particular class.

In contrast, in this instant case, there is no clear concurrence of a lawful subject and a lawful method in the enactment of the Zoning Ordinance. For one, it bears emphasis, as the trial court significantly observed in its assailed decision, that "there [are] no issue[s] of health and safety, morals, peace, good order, comfort, and convenience of the city and its inhabitants, and the protection of their property [that are] involved or invoked by the [local government.]"[44] The trial court aptly observed:

> In the same breath[,] it cannot escape one's notice that what the respondent city government seeks to achieve with the reclassification of the 7-hectare area under the petitioner's usufruct is to clear it for development into a metropolitan commercial zone, requiring those which cannot comply to relocate themselves. Such goal is sought to be achieved *by legislating the petitioner out of the usufruct area which it has a right to use up to 2027[,] by simply changing the use to which it can be devoted. This is clear enough[,] inasmuch as the petitioner is the only long-lasting entity in the area whose activities — being largely horticultural and environmental —are not consistent with a metropolitan commercial zone*

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41 *Social Justice Society (SJS) v. Hon. Atienza, Jr.*, *supra* note 31, at 702.
42 *Id.*
43 *Id.*
44 *See rollo* (G.R. No. 208788), p. 22, RTC Decision dated June 18, 2013.

> *under the zoning ordinance.* Therefore[,] the application to the petitioner of this police power measure[,] which has nothing to do with any peril or danger to health and safety, morals, peace, good order, comfort, and convenience of the city and its inhabitants, and the protection of their property[,] should indeed be struck down as an arbitrary intrusion into private rights and a violation of the due process clause.[45] (Emphasis supplied)

I am aware of the well-settled principle that in the exercise of police power, property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government,[46] such that police power is superior to the non-impairment clause.[47] However, this principle is premised on the concurrence of a lawful subject and a lawful method. Equally important, the issue here cannot be reduced to a simple claim that mere contractual obligations are being nullified by the Zoning Ordinance.[48] The fact that a usufruct was entered into **by the national government** with Manila Seedling significantly changes the nature of the contract.

To reiterate, Proclamation No. 1670 granted Manila Seedling the usufruct of the subject property, which is owned by the NHA, exclusively for use in its operations and projects, namely, producing tree seedlings, vegetable seeds, forest and fruit bearing trees for reforestation, as well as services such as tree pruning, tree balling and relocation, disease treatment, tree farming, greenhouse construction and maintenance, and plant clinics. This right, as recognized by the Court in the case of *National Housing Authority v. Court of Appeals*,[49] extends until 2027:

> In the present case, Proclamation No. 1670 is the title constituting the usufruct. Proclamation No. 1670 categorically states that the seven-hectare area shall be determined "by future survey under the administration of the Foundation subject to private rights if there be any."
> . . .
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> . . . .
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> The law clearly limits any usufruct constituted in favor of a corporation or association to 50 years. A usufruct is meant only as a lifetime grant. Unlike a natural person, a corporation or association's lifetime may be extended indefinitely. The usufruct would then be perpetual. This is especially invidious in cases where the usufruct given to a corporation or association covers public land. Proclamation No. 1670 was issued 19 September 1977, or 28 years ago. Hence, under Article 605, the usufruct in favor of MSBF has 22 years left.[50]

By reclassifying the seven-hectare property into the metropolitan commercial zone, the Zoning Ordinance effectively rendered nugatory Manila

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45 *Id.* at 21.
46 *Social Justice Society (SJS) v. Hon. Atienza, Jr., supra* note 31, at 703.
47 *See JMM Promotion and Management, Inc. v. CA*, 329 Phil. 87 (1996) [Per J. Kapunan, First Division].
48 *Ortigas & Co., Ltd. Partnership v. Feati Bank and Trust Co.*, 183 Phil. 176 (1979) [Per J. Santos, *En Banc*].
49 495 Phil. 693 (2005) [Per J. Carpio, First Division].
50 *Id.* at 702–705.

Seedling's usufruct over the subject property. With the issuance of the Zoning Ordinance, the Quezon City Government essentially forced Manila Seedling to change the use of the subject property to activities incompatible with the mandate of Proclamation No. 1670. This effectively terminated Manila Seedling's usufruct prematurely by more than a decade.

To my mind, the actions of the Quezon City Government amounts to a taking and not a mere regulation. Indeed, the general rule is that in the exercise of police power, the limitation or restriction imposed on property interests to promote public welfare involves no compensable taking.[51] Thus, in *Social Justice Society*, the Court dismissed the claims of the affected oil companies that the therein zoning ordinance, which reclassified the area where their terminals were located from industrial to commercial, absolutely prohibited them from conducting their business operations in the City of Manila. In shutting down these claims, the Court held that the zoning ordinance remains a regulation with no compensable taking because the properties of the oil companies and other businesses situated in the affected area remained theirs. Only their use was restricted, although they can be applied to other profitable uses permitted in the commercial zone.

Here, while it may be argued that the subject property remains to be NHA's, I submit once again that the peculiar circumstance of the usufruct with Manila Seedling lends a nuance in this case that cannot be brushed aside. As the beneficial owner of the subject property pursuant to said usufruct, Manila Seedling is left with no reasonable economically viable use of the subject property. The reclassification introduced by the Zoning Ordinance interferes with Manila Seedling's reasonable expectations for use of the subject property in accordance with Proclamation No. 1670. In other words, this is not a case where Manila Seedling can simply relocate and seek the exercise of its business elsewhere, as it relies on the gratuity of the national government through the usufruct.

Moreover, it should be noted that the Zoning Ordinance itself recognized the primacy of vested rights. Section 14 of the Zoning Ordinance states:

> SECTION 14. Repealing Clause – All ordinances, rules or regulations in conflict with the provisions of this Ordinance are hereby repealed; *provided that the rights that are vested before the effectivity of this Ordinance shall not be impaired.* (Emphasis supplied)

In sum, an ordinance cannot contravene a statute. It was an error on the part of the Quezon City Government to apply the Zoning Ordinance to the subject property during the pendency of Manila Seedling's usufruct and deny Manila Seedling the issuance of locational clearance and business permit. Since 1977, Manila Seedling enjoyed and continues to enjoy a vested right to use the property according to its operations and projects, with such right remaining in effect until 2027. Thus, by the very language of the Zoning

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[51] *See Social Justice Society (SJS) v. Hon. Atienza, Jr., supra* note 31, at 706.

Ordinance, the Quezon City Government cannot impair the usufruct vested upon Manila Seedling by prohibiting its business operations.

The public auction sale of the subject property is void. Even assuming the public auction sale is valid, Manila Seedling retains possession of the subject property.

In G.R. No. 228284, Manila Seedling, in its petition filed with the RTC, sought to declare void the Quezon City Government's forcible taking of the subject property on account of Manila Seedling's failure to redeem the same after being sold in a public auction to satisfy Manila Seedling's unpaid real property taxes.

There is clear merit in Manila Seedling's prayer to order the Quezon City Government to depart, leave and/or otherwise vacate the premises, and to cease and desist from further keeping the premises padlocked and other business therein.[52] It is my considered view that the Quezon City Government's taking and subsequent possession of the subject property is illegal because the public auction sale thereof to satisfy PHP 40,980,986.24 unpaid real property taxes is void.

First, it is undisputed that the seven-hectare property under Manila Seedling's usufruct is owned by NHA. As such, it cannot be sold to pay for Manila Seedling's real property tax liabilities.

Section 234(a) of the Local Government Code provides that real property owned by the Republic of the Philippines are exempt from payment of real property taxes, **except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person**. Thus, properties owned by NHA, including the subject property, are generally exempt from real property taxes.

NHA's exemption from paying real property taxes on its properties was affirmed by the Court in *National Housing Authority v. Iloilo City.*[53] In fact, the Court even said that due to this exemption, properties of NHA cannot be subjected to any delinquency sale:

> *In this case, NHA is indisputably a tax-exempt entity whose exemption covers real property taxes and so its property should not even be subjected to any delinquency sale.* Perforce, the bond mandated in Section 267, whose purpose it is to ensure the collection of the tax delinquency should not be required of NHA before it can bring suit assailing the validity of the auction sale.
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> Note should be taken that NHA had consistently insisted on the nullity of the proceedings undertaken by respondent Iloilo City which

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52 *Rollo* (G.R. No. 228284), pp. 72–74, Manila Seedling's Petition dated July 9, 2012.

53 584 Phil. 604 (2008) [Per J. Tinga, Second Division].

> eventually led to the public auction sale of its property. *Since, as had been resolved, NHA is liable neither for real property taxes* nor for the bond requirement in Section 267, *it necessarily follows that any public auction sale involving property owned by NHA would be null and void* and any suit filed by the latter questioning such sale should not be dismissed for failure to pay the bond.
>
> *NHA cannot be declared delinquent in the payment of real property tax obligations which, by reason of its tax-exempt status, cannot even accrue in the first place.*[54] (Emphasis supplied)

However, as Section 234 provides, this exemption ceases when the beneficial use of the government property has been granted, for consideration or otherwise, to a taxable person. Beneficial use means that the person or entity has the actual use and possession of the property. In such a case, the government property is no longer exempt from real property tax and the liability to pay for the same devolves on the taxable person or entity which has the beneficial use of the property—and **not** the Republic of the Philippines, government instrumentality or political subdivision, who owns the property.

In this case, the beneficial use of the subject property owned by NHA is with Manila Seedling. As the beneficial user, it is liable for the real property taxes accruing thereon. In fact, in the August 23, 2010 case of *Manila Seedling Bank Foundation, Inc. v. City Treasurer Victor B. Endriga, Quezon City, et al.,* docketed as G.R. No. 191335, the Court affirmed the trial court's ruling that the declared the City Treasurer's right to proceed against Manila Seedling for the latter's real property tax liabilities that accrued from the effectivity of the LGC in 1992, provided such is not yet barred by prescriptive period for assessment and collection.[55] The said August 23, 2010 Resolution became final and executory on February 21, 2011.[56]

The next question now is, in case of delinquency on the part of the beneficial user, can the local government proceed against the government property for unpaid real property taxes?

The answer is no. The Court *en banc's* pronouncement in *Philippine Heart Center v. The Local Government of Quezon City*,[57] (*Philippine Heart Center*) is controlling.

> As for respondents' levy and subsequent sale of the PHC's properties, these acts have no basis in law. Section 256 of RA 7160 provides:
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> **Section 256**. *Remedies for the Collection of Real Property Tax.* — For the collection of the basic real property tax and any other tax levied under this Title, the local government unit concerned **may avail of the remedies**

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54 *Id.* at 611.
55 *Ponencia*, p. 26.
56 *Id.*
57 872 Phil. 930 (2020) [Per J. Lazaro-Javier, First Division].

> **by administrative action thru levy on real property or by judicial action**. (emphasis added)
>
> The provision must be read in connection with Section 133(o) of RA 7160 exempting the Republic from local taxes, and Section 234 of the same law allowing the imposition of tax on real property owned by the Republic when the beneficial use thereof has been granted to a "taxable person."
>
> Notably, it is the "taxable person" with beneficial use who shall be responsible for payment of real property taxes due on government properties. Any remedy for the collection of taxes should then be directed against the "taxable person," the same being an action *in personam*.
>
> In another vein, the Republic and its instrumentalities including the PHC retain their exempt status despite leasing out their properties to private individuals. The fact that PHC was short of alienating its properties to private parties in relation to the establishment, operation, maintenance and viability of a fully functional specialized hospital, does not divest them of their exemption from levy; the properties only lost the exemption from being taxed, but they did not lose their exemption from the means to collect such taxes.
>
> *Otherwise stated, local government units are precluded from availing of the remedy of levy against properties owned by government instrumentalities, whether or not vested with corporate powers, such as the PHC. Indeed, it would be the height of absurdity to levy the PHC's properties to answer for taxes the PHC does not owe. This leaves the Quezon City Government with only one recourse — judicial action for collection of real property taxes against private individuals with beneficial use of the PHC's properties.*[58] (Emphasis supplied, citation omitted)

The foregoing pronouncement should be applied to this case. The real property taxes accruing on the subject property are Manila Seedling's tax liability and not NHA's. While the Quezon City Government has the right to assess and collect real property taxes from Manila Seedling as the beneficial user, it cannot levy on NHA's property and sell it in a delinquency sale to satisfy Manila Seedling's unpaid real property taxes. As emphasized in *Philippine Heart Center*, the Quezon City Government should have instead filed a collection suit against Manila Seedling for the unpaid real property taxes on the subject property. Consequently, the public auction of the subject property is void.

Second, the seven-hectare property under Manila Seedling's usufruct is a property of public dominion intended for public service. As such, it is exempt from levy, encumbrance, or any disposition in a public or private sale.

Article 420 of the Civil Code provides:

> **ART. 420.** The following things are property of public dominion:

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[58] *Id.* at 962–963.

> (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;
>
> (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth. (339a)

The subject property is part of the 120-hectare NHA property reserved for the establishment of the National Government Center Site, under Proclamation No. 481. As discussed, by virtue of Proclamation No. 1670, President Ferdinand Marcos granted Manila Seedling the right to use part of this 120-hectare property for production of tree seedlings, vegetable seeds, and forest and fruit bearing trees for reforestation and agro-forestry development, until 2027.

On November 11, 1987, President Corazon C. Aquino issued Memorandum Order No. 127,[59] which revoked the reserved status of approximately 50 hectares which remained out of the 120 hectares of the NHA property reserved as site of the National Government Center. Memorandum Order No. 127, also authorized the NHA to commercialize the area and to sell it to the public.[60] Effectively, Memorandum Order No. 127 converted 50 hectares of the NHA property to patrimonial property of the State. While it was formerly intended for public use and public service as the site for the National Government Center, the President subsequently categorized the same for commercial use and authorized NHA to sell it to private persons.

However, in *National Housing Authority v. Court of Appeals*,[61] the Court recognized that the subject property is not covered by Memorandum Order No. 127, *to wit:*

> MO 127 released approximately 50 hectares of the NHA property as reserved site for the National Government Center. However, MO 127 does not affect MSBF's seven-hectare area since under Proclamation No. 1670, MSBF's seven-hectare area was already "exclude[d] from the operation of Proclamation No. 481, dated October 24, 1968, which established the National Government Center Site."[62]

To my mind, since the subject property was not part of NHA's property authorized by the President to be commercialized and sold to the public, it was not converted to patrimonial property of the State. In other words, it remains to be a property of public dominion intended for public service.

It is a settled rule that property of public dominion is outside the commerce of man. It cannot be subject of an auction sale, levy, encumbrance,

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59 Releasing as Reserved Site for the National Government Center the Remaining Fifty (50) Hectares of the National Housing Authority (NHA) Property Covered By Proclamation No. 481, and for Other Purposes.

60 *See National Housing Authority v. Manila Seedling Bank Foundation, Inc.*, 787 Phil. 531, 534 (2016) [Per C.J. Sereno, First Division].

61 *Supra* note 49.

62 *Id.* at 705.

or disposition through public or private sale. Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy.[63] Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures, and auction sale.[64] This is what happened to the present case. The public service for which the subject property was intended—production of tree seedlings, vegetable seeds, and forest and fruit bearing trees for reforestation and agro-forestry development—was disrupted and eventually terminated when the Quezon City Government sold the subject property in public auction.

Accordingly, notwithstanding Manila Seedling's real property tax delinquencies, the subject property, being a property of public dominion, cannot be sold at public auction.[65] The Quezon City Government must satisfy the tax delinquency through means other than a public auction sale of the subject property.[66] Again, to stress, the public auction sale of the subject property, not being sanctioned by law, is void. The subsequent taking and possession of the subject property by the Quezon City Government is therefore illegal.

Even assuming that the public auction sale is valid, and ownership of the subject property is transferred to Quezon City Government, Manila Seedling's usufruct should, again, be respected.

Usufruct, under Article 562 of the Civil Code, is defined as "a right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides." It is a real right that attaches to the property itself. When a usufruct is constituted, the owner thereof parts with his or her right to possess and enjoy the property, including the fruits thereof, in favor of the usufructuary, while only retaining the power to alienate the same. The Civil Code similarly circumscribes the acts that the naked owner of a property subject of another's usufructuary, which provides that the owner may alienate the same to another but refrain from performing any acts which would redound to the prejudice of the usufructuary, as proscribed by Article 581, to wit:

> **ART. 581.** The owner of property the usufruct of which is held by another, may alienate it, but he cannot alter its form or substance or do anything thereon which may be prejudicial to the usufructuary. (489)

For another, the Civil Code also upholds the preservation of the usufruct on a property until the same is validly terminated, the grounds for which are also exclusively outlined under Article 603, *viz.*:

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63 *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 219 (2006) [Per J. Carpio, *En Banc*].

64 *Id.*

65 *See Privatization and Management Office v. CTA*, 849 Phil. 652 (2019) [Per J. Reyes, Jr., Second Division]; *see also Philippine Fisheries Development Authority v. Court of Appeals*, 555 Phil. 661 (2007) [Per J. Ynares- Santiago, Third Division].

66 *Id.*

> **ART. 603.** Usufruct is extinguished:
>
> (1) By the death of the usufructuary, unless a contrary intention clearly appears;
>
> (2) By the expiration of the period for which it was constituted, or by the fulfillment of any resolutory condition provided in the title creating the usufruct;
>
> (3) By merger of the usufruct and ownership in the same person;
>
> (4) By renunciation of the usufructuary;
>
> (5) By the total loss of the thing in usufruct;
>
> (6) By the termination of the right of the person constituting the usufruct;
>
> (7) By prescription. (513a)

Clearly omitted from the foregoing enumeration is the sale of the property in usufruct by the naked owner to another. Stated differently, the owner's alienation of the property in usufruct does not interrupt or disturb, in any manner, the usufructuary rights on it. As the case of *Spouses Rosario v. Government Service Insurance System*[67] affirms:

> Meanwhile, usufructuaries are also protected from a writ of possession because during the subsistence of the usufruct, the owner parts with his right to possess and enjoy the property in favor of the usufructuary, while only retaining the *jus disponendi* or the power to alienate the same. Under Article 603 of the Civil Code, sale of the property is not one of the causes of termination of the usufruct.[68] (Citations omitted)

In other words, apart from any of the grounds enumerated under Article 603 of the Civil Code, a usufruct subsists and must be respected, since it is a real right that attaches to the property itself. Any change of ownership should similarly recognize and respect the existing usufructuary rights on the property.

Applying these principles to the present case, regardless of the validity of the public auction sale and the transfer of ownership over the subject property, Manila Seedling's right to use the subject property remains in effect. The Quezon City Government should not have taken possession of the subject property to the prejudice of Manila Seedling's rights as a usufructuary.

Hence, the Quezon City Government should be directed to restore possession of the subject property to Manila Seedling. The period of dispossession should be added to the remaining period of the usufruct. This

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67 G.R. No. 200991, March 18, 2021, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67794> [Per J. Zalameda, First Division].

68 *Id.*

additional period begins to run only from the time Manila Seedling is restored to possession of the subject property.

However, as noted in the *ponencia*, restoring possession of the subject property to Manila Seedling is no longer practicable with the ongoing developments in the area. In this regard, with the finding that the Quezon City Government's taking of the property is illegal, and considering that this case has dragged on for years, judicial efficiency and equity demand that instead of simply dismissing the case, the Court should have remanded the same to the relevant trial court to determine Manila Seedling's entitlement to compensatory damages, if any.

In light of the foregoing, I vote to grant Manila Seedling's petition in G.R. No. 228284 and deny the petition filed by the Quezon City Government in G.R. No. 208788. The Zoning Ordinance is void, insofar as it violates Proclamation No. 1670 and impairs Manila Seedling's usufructuary rights. I also vote that, in view of the impracticality of restoring Manila Seedling to its possession, this case should be remanded to the RTC, Quezon City, Branch 216 for the determination of Manila Seedling's entitlement to compensatory damages.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice