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SEQUESTRATION: A REVIEW*

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I.

Prior to February 25, 1986, the word *sequestration* appeared in statute law principally in the Civil Code as a form of involuntary deposit. It was really just another word for attachment or receivership.

The word "sequestration," however, appears to have formed part of Philippine jurisprudence only after the war in the case of *Hawpia vs. China Banking Corporation*[1] which dealt with the consequences of the military takeover of enemy property during the war. We do not encounter that word again -- neither in law nor in jurisprudence -- in any significant way until February 28, 1986 with the enactment by President Corazon Aquino of Executive Order (E.O.) No. 1. Since then the intensity of the use of that "S" word both in journalistic as well as in judicial parlance may have well made up for all the years of non-use before then.

In Sec. 2(a) of E.O. No. 1, we see that "sequestration" is mentioned as one of the two means for the recovery of all ill-gotten wealth of the Marcos spouses, their immediate family, relatives, subordinates and associates. We see that sequestration could apply to buildings, offices and records pertaining to alleged ill-gotten wealth.[2] By March 25, 1986, the Provisional Constitution of the Republic of the Philippines[3] had enshrined "sequestration" as one of the areas in which the President could exercise her legislative powers in pursuit of the people's mandate to recover ill-gotten properties amassed by the leaders of the previous regime, their relatives and their close associates at that time.[4]

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[1] 80 Phil. 604.

[2] CREATING THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, Executive Order No. 1, Sec. 3 (b) (1986).

[3] PROVISIONAL CONSTITUTION, PROCLAMATION NO. 3(1986).

[4] *Id.*

On February 2, 1987, the Constitution reaffirmed the lawfulness of the issuance and implementation of writs of sequestration. At the same time, however, the 1987 Constitution placed a time limit on the PCGG's power to further issue the writs; it also imposed preconditions to the continued enforcement of writs already issued beyond a specific period.[5]

This paper deals with sequestration and the development of the jurisprudence thereon after February 25, 1986 in relation to the use thereof by the Presidential Commission on Good Government (PCGG), upon which that power had been vested.

II.

Executive Order No. 1 gives the PCGG the authority to recover this ill-gotten wealth by means of the "...takeover and sequestration of all business enterprises and entities owned or controlled by them during his administration, directly or through nominees, by their having taken undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.[6]

Three months after the EDSA event and after the enactment of E.O. No. 1, the word "sequestration" reentered Philippine Jurisprudence in a Resolution of the Supreme Court on a petition filed by the Tourist Duty Free Shops, Inc. against the PCGG.[7] This was followed by other resolutions and decisions of the Supreme Court including the decision in the landmark case on the concepts involved in sequestration, namely, the case of *Bataan Shipyard & Engineering Corporation Co., Inc.*[8] This case described in intensive detail both the functions of the PCGG and the limitations of the powers it possessed in the performance of its functions. *BASECO* as well as the PCGG cases which anteceded it dealt with the PCGG's primacy in the determination of when, upon what and, generally, in what manner the PCGG would exercise those powers.

These decisions were rendered during what we might call the formative period of the jurisprudence on PCGG. Most significantly, these decisions related to events prior to the ratification of the 1987 Constitution.

[5] PHIL. CONST., Art. XVIII, SEC. 26.

[6] E. O. No. 1, Sec. 2(a).

[7] G.R. No. 74302, (May 27, 1986).

[8] 150 SCRA 181, May 27, 1987; (hereinafter referred to as *BASECO*).

The essence of sequestration under E.O No. 1 and under PCGG's own Rules and Regulations has been accepted in jurisprudence as the placing or causing to be placed, under the PCGG's possession or control, property claimed to have been "ill-gotten."[9]

The distinction has been made both in the text of the law as well as in early jurisprudence between "sequestration," on the one hand, and "freeze orders" and "provisional takeover," on the other. The contemporaneous acts of the PCGG, however, and even subsequent decisions of the Supreme Court have gradually blurred into a very strict and literal observance of the distinction.[10] For example, the basic action of the PCGG over the Bataan Shipyard and Engineering Co., Inc., was the Sequestration Order dated April 14, 1986,[11] which was implemented by a Task Force led by three persons. Within a week of the Order, however, the Task Force had terminated BASECO's contract with its security agency; it had amended the contracts with truck owners and contractors of BASECO over the mode of payment of fees for the use of the roadways; it had started the operation of the BASECO quarry at Mariveles, Bataan; and it had ordered the disposal or sale of metal scrap as well as materials, equipment and machinery that were no longer usable. Meanwhile, the takeover order was effected by a letter dated July 14, 1986, almost four months after BASECO had been sequestered and after these acts had been performed.

This lack of distinction between sequestration and the exercise of other powers by the PCGG might be explicable, again, by the sequence of events. Thus, on February 28, 1986, E.O. No. 1 spoke only of "takeover or sequestration" when it spoke of the PCGG's powers directed towards the recovery of "ill-gotten wealth."

On March 12, 1986, by virtue of Executive Order No. 2, the President did *not* order the sequestration or takeover of any property. Instead, the President, on her own, was to freeze or had actually frozen all of the assets and properties

[9] *In BASECO*, 150 SCRA at 209, the court cited as examples property acquired through or as a result of improper or illegal use or conversion of funds belonging to the Government or any of its branches or instrumentalities, enterprises or financial institutions, or, if not by these means, then by undue advantage of official position, authority, relationship, connection or influence resulting in unjust enrichment to the ostensible owner and in grave damage and prejudice to the State.

[10] Instead, the generic word describing the PCGG's exercise of its powers has become simply "sequestration." "Provisional Takeover" of business enterprises has become merely a more intensive form of sequestration. "Freeze Orders" which are intended to prevent the execution of certain acts, have generally been undertaken in the context of already sequestered property or business concerns.

[11] *Id.* at 193-194.

in which the spouses Ferdinand and Imelda Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees may have had any interest or participation,[12] interestingly enough, without stated regard as to whether or not they were "ill-gotten."[13]

By the time E.O. No. 14 was issued on May 7, 1986, no new powers had been recognized by any superior authority, whether by Proclamation No. 3 which had installed the Interim Constitution, the so-called Freedom Constitution, or by Executive instruction, much less by "Executive Legislation," if that seeming legal oxymoron might be indulged in. In fact, the Interim Constitution spoke only of "orders of sequestration or freezing of assets or accounts."[14]

III.

Eventually, the concept of "sequestration" as a means for the recovery of the so-called "ill-gotten wealth" began to join the mainstream of previously established Philippine laws: the Civil Code- both the old and the new -- where Judicial Deposits[15] are provided for in relation to the protection of property in litigation, and the jurisprudence on the Rules of Procedure, which provided the established practice for protection of property in litigation through the writ of preliminary attachment and receivership.[16] In *BASECO*, we see the Supreme Court juxtaposing and then blending the concept of sequestration with those of preliminary attachment and receivership.[17]

The common perspective from which the writs of sequestration, freeze orders and provisional takeovers of the PCGG approximate the traditional

[12] FREEZING OF ASSETS, Executive Order No.2, Sec.1 (1986).

[13] There is, however, no data available regarding the extent to which this was implemented over the assets and properties of these persons or the document by which this may have been actually effected.

[14] Proclamation No. 3.

[15] NEW CIVIL CODE, Republic Act No. 485 (1950) Secs. 2005 to 2009 (Title XII, Chapter 4); Secs. 1785 to 1789.

[16] Id.

[17] In *BASECO*, 150 SCRA at 213 the Court stated that sequestration, freezing and provisional takeover are akin to the provisional remedy of preliminary attachment or receivership. By attachment, a sheriff seizes property of a defendant in a civil suit so that it may stand as security for the satisfaction of any judgment that may be obtained, and not disposed of, or dissipated, or lost intentionally or otherwise, pending action. By receivership, property, real or personal, which is subject of litigation, is placed in the possession and control of a receiver appointed by the Court, who shall conserve it pending final determination of the title or right of possession over it.

remedies of attachment and receivership is that all of these, in the view of the Supreme Court, are "...provisional, temporary, designed for particular exigencies, attended by no character of permanency or finality, and always subject to the control of the issuing court or agency."[18] As jurisprudence and the new Constitution would later acknowledge, the PCGG would have to justify its original issuance of the writs of sequestration and its acts thereunder to the Sandiganbayan,[19] an agency which had not issued the writs. Furthermore, sequestered properties would be deemed in custodia legis under the ultimate control of the Sandiganbayan.[20]

Even on February 2, 1987, however, when the Constitution went into effect, legal thinking on sequestration was not in very sharp focus. An Executive entity -- definitely a non-judicial agency -- had been vested with extraordinary quasi-judicial powers over property and over persons. This agency had, on its own, the authority to make a determination of the *object* of the exercise of its powers; and, by the peculiar circumstances surrounding its creation and its purpose, it was conceded wide latitude in the manner of the exercise of these powers.[21]

In *PCGG vs. Pena*,[22] the Supreme Court laid the backdrop upon which the statutes creating the PCGG had been enacted and the perspective from which the exercise of its powers had been viewed. Said the Supreme Court:

> Having been charged with the herculean task of bailing the country out of the financial bankruptcy and morass of the previous regime and returning to the people what is rightfully theirs, the Commission could ill-afford to be impeded or restrained in the performance of its functions by writs of injunctions emanating from tribunals co-equal

[18] *Id.*

[19] *Republic vs. Sandiganbayan*, 192 SCRA 743 (1990).

[20] *PCGG vs. NLRC*, G.R. No. 90180 (March 22, 1990).

[21] In *BASECO*, 150 SCRA at 207, the Supreme Court described the factual necessity for the PCGG's extraordinary powers thus:

"There can be no debate about the validity and imminent propriety of the Government's plan to recover ill-gotten wealth."

"Neither can there be any debate about the proposition that assuming the above described factual premises of the Executive Orders and Proclamation No. 3 to be true, to be demonstrable by competent evidence, the recovery from Marcos, his family and his minions of the assets and properties involved, is not only a right but a duty on the part of the Government."

[22] 159 SCRA 556.

to it and inferior to this Court.[23]

This merely reiterated what the Supreme Court had already said in *BASECO*, to wit:

> The institution of these provisional remedies is also premised upon the State's inherent police power, regarded as "the power of promoting the public welfare by restraining and regulating the use of liberty and property," and as the most essential, insistent and illimitable of powers x x x in the promotion of general welfare and the public interest," and said to be "co-extensive with self-protection and x x x not inaptly termed (also) the 'law of governing necessity.'"[24]

IV.

As the jurisprudence acknowledged the expanse of the PCGG's exercise of its powers of sequestration, it did not fail to state both the justification for it as stated above and the internal strictures which the PCGG was presumed to have observed in its exercise.

As early as May 27, 1986 in *Tourist Duty-Free Shops, Inc. vs. PCGG, et al.,*[25] the Supreme Court made it a point to insist that the PCGG had to act with prima facie basis in issuing sequestration orders, to satisfy itself that there, indeed, existed facts upon which the PCGG could justify the exercise of its extraordinary powers. This need would be reiterated in various decisions until the Supreme Court eventually got to the point where it ruled that the Sandiganbayan could indeed demand proof of the prima facie validity of the sequestration.[26] For this purpose, the Supreme Court accepted as adequate basis a connection between the close relationship of the parties to the Marcos spouses with what was perceived to be outrageously advantageous contracts to these privileged personalities -- as in the case of Pistang Pilipino which had leased the land of the Land Bank at very low rentals.

In the case of the Tourist Duty-Free Shops, the Supreme Court accepted the validity of the sequestration upon a narration that the company belonged to

[23] *PCGG vs. Pena,* 159 SCRA 556, at 565.

[24] *BASECO*, 150 SCRA 181 at 217-218.

[25] G.R. No. 74302 (May 27, 1986).

[26] *Republic vs. Sandiganbayan,* 192 SCRA 743 at 764.

the Marcoses alone or in partnership with the family of Gliceria Tantoco. The *prima facie* finding on this was premised on the special permit issued by President Marcos to operate the Duty-Free Shop and the subsequent issuance of an exclusive license under P.D. No. 1193 where all it had to pay by way of a franchise tax was 7% on *net* sales, 2% of which went to the Government directly while the rest went to specific non-governmental projects such as the Nutrition Center, the Seedling Bank and Mt. Samat Reforestation foundations. The Duty-Free Shops, Inc. had been organized in 1975 with a paid-up capital of P250,000.00 and by 1983 it had been worth 80 million pesos in paid-up capital, 95% of its stock in the name of two Tantoco daughters.

In the *BASECO* case the Supreme Court discussed in extensive detail the basis for the PCGG's issuance of the writs of sequestration against BASECO and related companies. Apparently, the BASECO and related corporations were formed through the takeover by Philippine Navy Capt. (later Commodore) Armando "Bejo" Romualdez, brother of Imelda Romualdez-Marcos, of properties and facilities of government entities such as the National Shipyard and Steel Corporation (NASSCO), the Bataan National Shipyard, and later Engineer Island itself, as well as 300 hectares of the Export Processing Zone at Mariveles, Bataan. Most significant in this case was that almost all, if not all, of the certificates of stock of these and related corporations were supposedly found in Malacanang after the EDSA event of February 25, 1986, apparently indorsed in blank. And much as the BASECO stockholders of record protested that they really possessed their own certificates of stock, they could not present them to the Supreme Court when challenged to do so.

In all these cases, where companies protested the sequestration, what was most significant was the statement of the Supreme Court with regard to the PCGG's judgment and decision in the issuance of writs of sequestration:[27]

> 1. Since the Supreme Court is not a trier of facts, it cannot go over all the minute evidence presented before the PCGG when the propriety of its exercise of discretion is questioned.
>
> 2. In the issuance of writs of sequestration, prior hearing was not a pre-requisite of due process since prior hearing could make possible the disposal of the properties involved; neither was a hearing necessary afterwards since the PCGG could rely on the evidence already before it to justify the continuation of the sequestration. This was especially appropriate since the PCGG's limited staff had to

[27] *Ofelia Trinidad vs. PCGG*, G.R. No. 77695 (June 17, 1987).

allocate its attention to the multifarious matters pending before it.

The Supreme Court had, as above stated, likened the issuance of writs of sequestration and freeze orders to the issuance of writs of preliminary attachment and receivership. Thus, the ex parte character thereof was appropriate, according to the Supreme Court, because of the obvious need to avoid alerting possessors of "ill-gotten" wealth and thereby cause the disappearance or loss of property sought to be protected.[28] After all, said the Supreme Court, what is anathema to due process is not so much the absence of previous notice but the absolute absence of notice and lack of opportunity to be heard.[29]

V.

There is no doubt that tension existed between the urgency of the need to recover "ill-gotten wealth" from those perceived to have been in positions of privilege in the previous regime and the equally urgent need to observe the accepted fundamental individual rights under a constitutional system to which even these persons, the so-called "cronies," were entitled. While the Supreme Court, therefore, had viewed the PCGG to be in a heroic quest to rescue the national patrimony, it did not release the PCGG from the moorings of established jurisprudence and constitutional precepts; as the Supreme Court recognized the connection of the country's survival as a democracy to the recovery of the so-called "ill-gotten wealth," it continually harped upon the need for the PCGG to maintain the legal basis for the issuance of its writs of sequestration.

Jurisprudence conceded the primacy of the PCGG to determine the propriety of the issuance of its writs, yet, it identified these extraordinary writs with the existing remedies in ordinary judicial processes, clearly indicating thereby the limits of these powers. As the Supreme Court concedes the well nigh incontestability of the PCGG's primary authority to sequester, it promised to the possessors or owners of sequestered properties, the "cronies" the day when the PCGG would have to justify itself before the courts and at which time they could obtain redress whenever this was proper.

VI.

The promise of deliverance to alleged "cronies" began with Executive Order No. 14 when it authorized the filing of suits by the PCGG against the

[28] *BASECO*, 150 SCRA 181 at 214-215.

[29] *Id.*

Marcos spouses, their relatives and their "cronies" in all cases investigated by it under Executive Orders No. 1 and No. 2. This Executive Order was a weak promise at that time, for the PCGG was not obliged to initiate judicial proceedings. And while judicial proceedings had been initiated against the PCGG over its writs of sequestration in the lower courts, the PCGG had successfully fended them off on the premise that under the Executive Order only the Sandiganbayan had jurisdiction over the acts of the PCGG, a contention forcefully affirmed by the Supreme Court in *PCGG vs. Pena*.[30] The PCGG, for its part, however, had not initiated any action or proceeding before the Sandiganbayan at any time soon after May 7, 1986 when Executive Order No. 14 was promulgated.

In a short time after that, however, the Constitutional Commission had been convened. The ConCom was in ferment over many matters of public concern, among which was the PCGG and the stories that had become rife about its personnel and its operations. By October of 1986, the draft of the new Constitution had been completed and approved by the Constitutional Commission. Section 26 of the Transitory Provisions (Article XVIII), addressed itself specifically to the PCGG.[31] The draft Constitution laid down a few conditions which would have far-reaching consequences for the PCGG and for the Marcoses, their relatives and their alleged "cronies."

Admittedly, the draft Constitution re-affirmed Executive Orders No. 1 and No. 2, as well as proclamation No. 3's recognition of the PCGG's authority to issue writs of sequestration and freeze orders; however, it also fixed a deadline for the last sequestration and the issuance of the last freeze order that the PCGG could issue: eighteen (18) months after ratification. The draft Constitution admittedly acceded to an indefinite period for the exercise of the PCGG's powers over properties already sequestered or frozen; it imposed, however, a condition for the continued exercise of these powers: the PCGG had to initiate the corresponding judicial action or proceeding within six (6) months from the ratification of the Constitution for writs already issued, or from the issuance of any writ or freeze order issued thereafter.

[30] 159 SCRA 556.

[31] PHIL CONST., Art. XVIII, Sec. 26: The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution... For orders issued before 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.

A month after the completion of the draft Constitution, the PCGG filed with the Sandiganbayan Criminal Case No. 11960 against Marcos's son-in-law Gregorio Araneta III, popularly known as "Greggy," and a number of former Philippine National Bank officials with regard to the Pantranco North Express, Inc. for the violation of the Anti-Graft and Corrupt Practices Act (Sec. 3, R.A. 3019). Before the end of the year, the first civil case was filed against the Marcos spouses over real estate properties in New York City. Then there was silence.

The Constitution was ratified on February 2, 1987 and that date fixed August 2 of the same year as the first deadline for the PCGG for the filing of appropriate judicial action or proceedings on all writs of sequestration and freeze orders issued before then. More silence from the PCGG.

Then, in a span of fifteen (15) days from July 17 to July 31, 1987, the PCGG filed thirty-three (33) civil cases based on Articles 19, 20 and 21 of the Civil Code against approximately one hundred and fifty individuals of various degrees of prominence. This Constitutional proviso had brought the conflicts between private property rights and the mandate of the PCGG at a confrontational stance before the Sandiganbayan -- the designated trier of facts. And this is where things have been for some time now.

VII.

Certainly, the legal contest has taken a new complexion. Writs of sequestration issued over properties of private individuals have remained in force except over properties where the cases have been the subject of compromise agreements.

Soon after the PCGG had filed its judicial actions in compliance with the Constitutional deadline, many motions were filed by private individuals which disputed the validity of the sequestrations originally issued and which prayed that the writs of sequestration be lifted or quashed. These motions were invariably denied by the Sandiganbayan upon the proposition that the original exercise of discretion thereon by the PCGG had been granted a general imprimatur by the Supreme Court. The acts of the PCGG had been previously accorded the presumption of regularity and of the existence of *prima facie* basis for the issuance of the writs being questioned. This presumption has been maintained. Additional, various decisions of the Supreme Court had indicated that the proper time to question the propriety of the issuance of these writs would be at the trial itself before the Sandiganbayan.

There was wisdom in this, specially from a practical point of view.

Since the bases for issuance of these writs were the very allegations in the complaints themselves, a hearing on each writ of sequestration would be a hearing on the heart of the lawsuits themselves. The question of proof would have to center on the strong link between the "crony" character of the particular defendant and the "ill-gotten" character of the property itself. In other words, the hearing on each motion could have become the trial for the cases, even before joinder of all issues. But the cases were not ready for trial then and, except for a few cases which are at the pre-trial stage, they are not even ready today.

VIII.

Then, as now, conflicts have revolved around the exercise of PCGG's powers over sequestered property, both physical and incorporeal. More prominently, conflicts have arisen regarding rights of stockholders over shares of stock in their names. The limitations on sequestration which had only been intimated in earlier decisions, have now become realities which the PCGG has had to confront. Most devastating to the government's quest to maintain control over sequestered "ill-gotten" wealth has been the judicial implementation of the second limitation imposed by the Constitutional provision on the PCGG, namely, the consequences of the PCGG's failure to commence the appropriate judicial action or proceeding during the periods fixed by Sec. 26 of Art. XVIII. Let us take them separately.

Sequestration (which has included "takeovers") has, as mentioned earlier, been seen by the Supreme Court as remedies akin to receivership and attachment. But as months and years moved further away from the EDSA event and as more and more time elapsed after February 27, 1986 when the PCGG was founded, the attitude of jurisprudence to the PCGG has shifted perceptively. Originally, for example, the Supreme Court drew the limits of the PCGG over sequestered property and either assumed that the PCGG would comply with them or, in the alternative, enjoined the PCGG to observe these. Due perhaps to the novelty of the situation and the perceived need for the PCGG to respond in different ways to various needs still unimagined, for the PCGG to achieve its objectives at that time, the Supreme Court laid the early caveat that its guidelines would by no means be all encompassing or even characterised by immutability.[32]

However, as the Supreme Court had said, one thing was certain and had to be stated at the outset: the PCGG could not exercise acts of dominion over

[32] *BASECO*, 150 SCRA 181 at 236.

property sequestered, frozen or provisionally taken over; these powers did not make the PCGG (nor, we might add, the Government) the owner of said properties; the PCGG would only be a conservator; thus, it could not perform acts of strict ownership.

A perspective was again added to the PCGG's performance of its functions: the exercise of its powers at sequestration had to entail the least interference so that in the event the seized business or property be not proven to have been ill-gotten, the enterprise could be returned to the rightful owner in, as far as possible, the same condition it was at the time of sequestration. The PCGG was also told that sequestered shares of stock could not be voted by the PCGG merely because the PCGG had no authority to do so: the PCGG could not vote the shares of stock to replace directors, to revise by-laws or bring about changes in corporate practice or policy, except when any of these were necessary to prevent undue disposal or dispersion of corporate assets. In brief, shares of stock could be voted by the PCGG only for "demonstrably weighty and defensible grounds."

In retrospect, it is perhaps with a touch of irony that these pronouncements had been made when the Supreme Court was acknowledging the PCGG's takeover of the management of the BASECO and related enterprises since it had been shown in this particular instance that the BASECO was owned and controlled by former President Marcos during his administration through his nominees. Even then, however, Mme. Justice Melencio-Herrera sounded the appropriate cautionary note that would in a few years descend like a loud clap of thunder upon the ears of the PCGG. Said Justice Herrera in her separate concurrence in the *BASECO* case:

> I have no objection to according the right to vote sequestered stock in case of a take-over of business actually belonging to the government or whose capitalization comes from public funds but which, somehow, landed in the hands of private persons, as in the case of BASECO. To my mind, however, caution and prudence should be exercised in the case of sequestered shares of an ongoing private business enterprise, specially the sensitive ones, since the true and real ownership of said shares is yet to be determined and proven more conclusively by the Courts.[33]

Gradually, jurisprudence recognized that the highly charged atmosphere under which the PCGG had been operating could not remain that way forever.

[33] *Id.*

The situation had to stabilize at some point where a semblance of normalcy in dealing with other people's properties could return. Thus, the shift in jurisprudence.

The Supreme Court had in the beginning conceded as valid the PCGG's transfer of the management and operation of the Duty-Free Shops[34] to the Department of Tourism, designating the government agency, in effect, as the PCGG's own fiscal agent; this was on May of 1986. By September of 1989, however, the Supreme Court had ruled that the PCGG could not transfer the administration of a sequestered house and lot in Forbes Park to the Asset Privatization Trust (APT)[35] since the APT by its charter[36] was allowed to manage only government property, whether recovered by the PCGG or by any other entity, and the sequestered property at North Forbes was not yet government property. As it happens, the Department of Tourism was not authorized to administer non-government property either.

Other changes gradually took place more significantly in the corporate sphere. Thus, the Supreme Court recognized that while the PCGG representatives occupied seats in a sequestered corporation, the acts of the corporation remained corporate acts and were not generally subject to Sandiganbayan's exercise of its exclusive jurisdiction over sequestered property.[37]

What originally appeared to have been merely an academic discussion of the registered owner's rights to sequestered shares of stock began to develop into a more palpable form. Thus, over the objection of the PCGG, the Supreme Court ruled that the registered owner of sequestered shares of stock did not lose the right to inspect corporate records as recognized in Sec. 74 of the Corporation Code, subject only to the normal limitations historically laid down by jurisprudence against inspections arising from frivolity and in the absence of good faith.[38]

[34] *BASECO*, 150 SCRA 181 at 253.

[35] G.R. No. 74302 (May 27, 1986).

[36] PROCLAIMING AND LAUNCHING A PROGRAM FOR THE EXPEDITIOUS DISPOSITION AND PRIVATIZATION OF CERTAIN GOVERNMENT CORPORATIONS AND/OR THE ASSETS THEREOF, AND CREATING THE COMMITTEE ON PRIVATIZATION AND THE ASSET PRIVATIZATION TRUST, Proclamation No. 50 (1986), and its companion Administrative Order No. 43.

[37] *Holiday Inn (Phils.), Inc. vs. Sandiganbayan*, G.R. No. 85515 (June 8, 1990).

[38] *Republic vs. Sandiganbayan*, 24 G.R. No. 80809 and No. 88858 (July 10, 1991).

In *Cojuangco vs. Roxas and Cojuangco vs. Azcuna*,[39] the Supreme Court categorically ruled that there was no doubt that the registered owners of shares of stock had a right to vote and to be voted for as members of the board of directors. It ruled in the same case that in the performance of its functions to preserve and prevent dissipation of "ill-gotten" wealth, the PCGG could monitor the operations of the corporation or of stockholders of sequestered shares of stock without necessarily having to vote them. "...The only conceivable exception," said the Supreme Court, "is a case of a takeover of a business belonging to the government or whose capitalization comes from public funds, but which landed in private hands as in BASECO." On January 9, this was confirmed in the case of *Africa vs. PCGG, et al.*[40]

The most crushing blow to the PCGG's drive to recover ill-gotten wealth began with the Supreme Court's resolution in *PCGG vs. International Copra Export Corporation*, et al -- the so-called *Interco Case*.[41] In that case, the Court upheld the Sandiganbayan when it deemed the sequestrations lifted over two copra companies in application of Sec. 26 of the Transitory Provisions of the Constitution.

In a decision dated August 12, 1991,[42] the Supreme Court reiterated the application of Sec. 26 of Article XVIII of the Constitution. In that case, the Philippine Journalists, Inc. or PJI had refused to recognize the right of eight registered stockholders to vote and to be voted upon at a stockholders meeting because the shares that were registered in their names had been sequestered. The PCGG claimed that even if these private individuals had been unimpleaded as defendants in the civil case filed against Benjamin "Kokoy" Romualdez, an annex of the complaint enumerated the sequestered shares of Romualdez in PJI which included those in the names of these eight (8) individuals. Thus, the PCGG claimed, the sequestration of the firm was in substantial compliance with the constitutional mandate since the PCGG had alleged in the civil complaint that the stockholders were dummies of Romualdez. The Supreme Court described this argument with one word: puerile. The Supreme Court reiterated the rule that a corporation is distinct from its stockholders; that if a corporation is unimpleaded it cannot be deemed to have been sued in an action against its stockholders; and that, furthermore, the claim in the complaint that the other stockholders were merely dummies of Romualdez cannot be binding unless those alleged dummies

[39] G.R. No. 91925 and No. 93005 (April 16, 1991).

[40] G.R. No. 83831 (Jan. 9, 1992).

[41] G.R. No. 92755 (Oct 3, 1990).

[42] *Republic vs. Sandiganbayan*, G.R. No. 92376 (Aug. 12, 1991)

were also impleaded. As a result of this case, there is now a flood of motions in the Sandiganbayan praying that the writs over many sequestered corporations, none of which have been impleaded, be lifted. Many of these motions have already been granted by the Sandiganbayan.

While these decisions of the Supreme Court do not mean the death of the PCGG's efforts at judicial recovery of the alleged "ill-gotten" wealth of the leaders of the previous regime and those closely associated with them, these are indeed serious setbacks.

It must be noted here -- and this is not merely a play of words -- that in implementing Sec. 26 of Art. XVIII of the Constitution, the Sandiganbayan has *not* lifted the writs of sequestration over unimpleaded corporations; instead, the Sandiganbayan has merely deemed the sequestration to have been automatically lifted by the PCGG's failure to implead these entities, as provided by the Constitution itself. While the other reliefs normally available from the Regional Trial Courts might be available to the PCGG from the Sandiganbayan, they will now have to be pleaded and justified as these provisional remedies are usually pleaded and justified before the Sandiganbayan.

At this time, there remain pending with the Supreme Court at least two petitions involving the voting rights of unimpleaded stockholders in a large bank as well as the voting rights of several unimpleaded corporations in the same bank which the PCGG has claimed to be merely alter-egos of a particular "crony." Whether or not the decisions of these two issues will conform to the pattern now laid out remains to be seen, but in either case, the results will be vital. This is where the matter of sequestration stands today.

IX.

What, perhaps, bears noting the most in all this is that in the midst of the passion generated by what Constitutional Commissioner Blas Ople has described as organized pillage and by an American Congressman as a kleptocracy, the judiciary has maintained an even keel in acknowledging the powers of the State acting through its governmental agencies and at the same time making clear that individuals have rights that deserve protection no matter who they may be or who they may have been. And that, like anybody else who appears before the Courts, even the government must work to prove its case under the law or fail in what it has set out to do. This, after all, is the essence of a free society under the rule of law.