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THE EXERCISE OF THE RIGHT TO VOTE SEQUESTERED SHARES: THE CASE OF THE COCONUT FARMERS

BRIGIDA S. ALDEGUER*

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THE EXERCISE OF THE RIGHT TO VOTE SEQUESTERED SHARES: THE CASE OF THE COCONUT FARMERS

BRIGIDA S. ALDEGUER

Like any topic of political complexion, the issue of sequestration is a controversial and unwieldy one. The exuberance of the early days of the Aquino administration - occasioned no doubt by the near-miraculous overthrow of former President Ferdinand E. Marcos - led not a few to expect that age-old problems could be solved as easily and as quickly as the five-day revolution had rid us of 20 years of dictatorship.

Of the many problems besieging the nation, one for which quick solutions were hoped was the recovery of the vast ill-gotten wealth amassed by Marcos and his cronies. For this end, the Presidential Commission on Good Government (PCGG) was created. But as not all businesses tainted with crony coloring were necessarily ill-acquired, the PCGG was tasked, in the meantime. with preserving or preventing, through sequestration, the disappearance or dissipation of suspected crony assets, businesses, and properties, while the courts settled the issue of their true ownership.

In 30 June 1986, the United Coconut Planters Bank (COCOBANK), which had long been associated with top crony capitalist Eduardo "Danding" Cojuanco, Jr., was sequestered by the PCGG. Unfortunately, the 51.8% shares of stock over which writs were issued belonged, not to Danding Cojuanco, but to thousands of coconut farmers who had acquired these shares out the proceeds of a coconut levy which they had borne on their collective shoulders for many years. Worse, the PCGG, pursuant to a memorandum issued by President Corazon C. Aquino conferring upon it the supplementary power of voting sequestered shares of stock, did exercise the voting rights attached to sequestered COCOBANK shares and catapulted to the bank's 15-man board its own directors. Result: the PCGG virtually took over COCOBANK.

While the case of Bataan Shipyard and Engineering Co. v. Presidential Commission on Good Government *affirmed the legality of the grant of powers to the PCGG, it nonetheless defined the nature and scope of these awesome powers and delineated the limited instances in which extreme measures, such as voting sequestered shares of stock , may be resorted to. And always, the Supreme Court exhorted the PCGG to be mindful of its overriding objective which was to preserve the assets, or to prevent their dissipation or wastage. The PCGG was never meant to manage crony assets as an owner simply because the power to do so existed.*

This thesis, which spans four chapters, contextualizes the rules of sequestration in a historical recounting of the coconut farmers' acquisition of COCOBANK. The writer seeks to illustrate that the manner in which the PCGG sequestered COCOBANK exceeded the limits set by law and jurisprudence, as well as the demands of necessity. And by continuing to exercise the voting rights attached to COCOBANK shares, among several other prerogatives, the PCGG is actually steering the course of COCOBANK as an owner, in contravention of its stated purposes and defined role as conservator. In conclusion, the writer assets that since neither urgency nor rationale exists to justify the PCGG's continued resort to extreme measures in the COCOBANK case, the right to vote sequestered shares ought to be restored to their rightful owners - the coconut farmer-stockholders.

INTRODUCTION: A PROFILE OF THE COCONUT INDUSTRY[1]

Three million two hundred and twenty six thousand hectares of Philippine land are devoted to coconut production. Coconut lands, of which there are 665,089 farmholdings and 543 plantations, comprise 27.6% of the country's agricultural lands. Agricultural lands are further subclassified into lands planted to cash crops and lands planted to non-cash crops, and of the agricultural cash crop lands in the Philippines, coconut lands make up 82.2%.

Planted on these vast coconut lands are 414 million coconut trees which yield 12 billion nuts a year. Coconut farmers produce from this harvest approximately 2 million metric tons of coconut oil annually. In terms of export earnings, the coconut industry is the third to the fifth highest-ranking contributor of export income to the national economy, based on production, price, and commodity classification.

Sixteen million Filipinos derive their livelihood, directly or indirectly, from the coconut industry. This figure represents a third of our population. Of this 16 million Filipinos, 1,166,448 coconut farmers are members of the Philippine Coconut Producers Federation, Inc. (COCOFED), a non-stock, non-profit private corporation.

From 1973 to 1982, the coconut farmers ultimately shouldered the burden of a coconut levy, whose proceeds, at the time of its suspension,

[1] E. Quinio, The Coconut Industry Vertical Integration Program: State of Suspended Animation (1988) (unpublished manuscript).

amounted to P 9,295,439.67.[2] The various laws authorizing the imposition of the coconut levy mandated that a portion of the collection be reserved for the establishment and operation of industries and commercial enterprises relating to coconut and other palm oil industries."[3] The laws further required that the investments be made for the benefit of the coconut farmers. As a result, the coconut farmers have, to date, become the registered owners of a commercial bank, an insurance company, several oil mills, a copra marketing corporation, an investment corporation, and a coco-chemical plant. In addition, the coconut farmers claim ultimate beneficial ownership of 31.23% of the total issued and outstanding capital stock of San Miguel corporation. All told, these assets are estimated at P 20 billion.

I. HISTORICAL BACKGROUND: HOW THE COCONUT FARMERS CAME TO OWN A BANK

A. The Players

Essential to the understanding of the workings of the Philippine coconut industry is the proper identification of the agencies which shape and direct it. Indeed, the interplay in the industry between Government and the private sector is both intricate and involved: on the one hand, the government agency formulates policies and programs for the development of the coconut industry and provides for the mechanisms to finance these programs; on the other hand, private sector agencies actively assist Government in the implementation of its plans.

1. THE PHILIPPINE COCONUT AUTHORITY

a. Origins, Purposes, and Powers

The roots of the present-day Philippine Coconut Authority (PCA) may be traced to its predecessor, the Philippine Coconut Administration

[2] Philippine Coconut Authority Report, Statement of Coconut Legal Assessment Collections, Allocations, Legal Authority, Amount, Fund Administrator and Benefits at 1 (undated).

[3] REVISED COCONUT INDUSTRY CODE, Presidential Decree No. 1468 Art. III, Sec. 2 (d) and Sec. 9 (1978). [hereinafter cited as Presidential Decree No. 1468]

(PHILCOA).

PHILCOA was created on 17 June 1954 by virtue of Republic Act Number 1145. It was charged with the development of the coconut industry and had two main specific purposes and objectives: first, the agency was "to ensure the steady and orderly development of the coconut industry, and to stabilize and strengthen its position in the world market;" and second, it was "to improve the tenancy relations between coconut proprietors and tenants and the living conditions of laborers engaged in the coconut industry."[4]

To facilitate the achievement of its aims, PHILCOA was vested with the power "to help planters and processors organize themselves into associations and cooperatives with a view to giving them greater control in the marketing of their products and to help them obtain more credit facilities."[5] Corporate powers were reposed in a Board of Administrators composed of five members appointed by the President of the Philippines, three of whom were required to be coconut planters.

During its existence, PHILCOA was empowered to levy a fee of ten centavos (P 0.10) for every one hundred kilos of dessicated coconut, coconut oil and copra, which was to be paid by the dessicators, oil millers, exporters, dealers, or producers respectively. The collections of this service fee constituted a special fund called the "Coconut Development Fund," which was reserved for the exclusive use of the PHILCOA.[6]

On 30 June 1973, PHILCOA was abolished, and, in its stead, the PCA was created under Presidential Decree Number 232.

The "whereas clauses" of Presidential Decree 232 indicated Government's growing awareness of the magnitude of the coconut industry and of the industry's need for a more integrated approach towards efforts at development. Government likewise acknowledged that "the economic well-being of a major part of the population depends, to a large extent, on the viability of the industry and its improvement in the areas of production, processing and marketing."[7] In the decree's "Declaration of Policy," the State

[4] AN ACT CREATING THE PHILIPPINE COCONUT ADMINISTRATION, PRESCRIBING ITS POWERS, FUNCTIONS, AND DUTIES, AND PROVIDING FOR THE RAISING OF THE NECESSARY FUNDS THEREFORE, Republic Act No. 1145, Sec. 2 (a) and (b) (1954).

[5] *Id.*, at Sec. 3 (f).

[6] *Id.* at Sec. 13-14.

[7] AN ACT CREATING A PHILIPPINE COCONUT AUTHORITY, Presidential Decree No. 232, Fourth Whereas Clause (1973) [hereinafter cited as Presidential Decree No. 232].

asserted a policy to promote accelerated growth and development of the coconut industry so that benefits from such growth would accrue to the greatest number.

Thus, the purposes and objectives of the defunct PHILCOA were expanded and further elaborated to suit the new goals set by the Government for the PCA. First, the PCA was tasked with the promotion and acceleration of all aspects of the coconut and palm oils industry. Second, it was charged with providing the industry general directions for its steady and orderly development. Third, it was to achieve the vertical integration of the coconut industry to help the coconut farmers become both participants in and beneficiaries of the coconut industry's growth and development.[8]

To better attain its new objectives, the PCA's powers and functions were likewise expanded to include policy and program review, evaluation, formulation, and implementation; supervision and coordination of activities of all agencies charged with the implementation of the various aspects of industry development; and regulation of the marketing and export of coconut products and its by-products. The PCA is governed by a Board of eleven members coming from both the public and the private sectors. Among the Board's members is the President of the Philippine Coconut Producers Federation, Inc. (COCOFED)

b. The Five Amendments to Presidential Decree 232

The original charter of PCA under Presidential Decree 232 was amended five times.

Presidential Decree Number 271. dated 9 August 1973, reduced the number of members of the Governing Board from an original of eleven to nine, while still maintaining representation of the coconut farmers through their recognized association, the COCOFED.

The second amendment came via Presidential Decree Number 273, promulgated on 20 August 1973, which empowered the PCA to formulate and immediately implement a stabilization scheme for coconut-based consumer products. The decree also imposed a levy of P 15.00 per 100 kilograms of copra resecada, or its equivalent in other coconut products, to be paid at every first domestic sale. This fund was to be collected for a period of one year and was to be paid to manufacturers of coconut based consumer products such as cooking oil, laundry soap, filled milk, and animal feeds. The levy imposed under this decree came to be known as the "Coconut Consumers Stabilization Fund Levy" (CCSF Levy), which was utilized to subsidize the sale of

[8] *Id.*

coconut-based products at prices set by the Price Control Council. This same levy amounted to P 9.6 billion in 1982, and a portion of it was used to acquire a commercial bank in 1975.

Presidential Decree Number 414, which took effect on April 1974, amended the PCA's original charter a third time by including among its purposes and objectives the task of formulating and implementing a price stabilization scheme for coconut products and coconut-based consumer goods. This decree extended indefinitely the collection of the CCSF Levy and authorized use of the funds for purposes other than subsidy, particularly to refund premium export duty collected and "to set aside funds for investment in processing plants, research, and development."[9] On 14 November 1974, the PCA was tasked with formulating and implementing a nationwide coconut replanting program to replace senile trees with precocious high yielding hybrid seednuts. These hybrid coconut seednuts were to be distributed for free to the coconut farmers.

Presidential Decree Number 582, the fourth amendatory law, established the Coconut Industry Development Fund for the replanting program, and directed the PCA, first, to pay P 100 million out of the CCSF Levy and, thereafter,to pay from said levy the amount of P 20.00 per 100 kilograms of copra resecada or its equivalent in other coconut products.

Finally, Presidential Decree Number 623, which was promulgated on 26 December 1974, re-organized the PCA Governing Board by further reducing the number of its members from nine to seven and by providing that the membership of the Board be composed of five representatives from the private sector, with the Chairman and the President of the Philippine National Bank sitting as ex-officio members. Farmers' representation in the Board was increased to three members, all of whom were to be recommended by the recognized farmers' association. In addition, the decree provided that one member of the Board be a nominee of the owner and operator of the hybrid coconut seedfarm.

c. Resume

In sum, therefore, the Philippine Coconut Authority is the government arm regulating the coconut industry that formulates, with the assistance of the private sector, the general program of development of the industry. At various stages of its history as a government agency, the PCA "had the duty to receive

[9] FURTHER AMENDING PRESIDENTIAL DECREE 232, AS AMENDED, Presidential Decree No. 414, Sec. 3-A (3) (1974) [hereinafter cited as Presidential Decree No. 414].

and administer the funds provided by law."[10]

The PCA was specifically empowered by several presidential decrees to collect, manage, and distribute to designated allotees the proceeds of the various coconut levies imposed. It was designated as collection agent and trustee of the fund created by virtue of Republic Act Number 6260. This fund would subsequently be used to establish a Coconut Investment Company to be owned and administered by the coconut farmers.

2. THE PHILIPPINE COCONUT PRODUCERS FEDERATION, INC. (COCOFED)

a. Origins and Purposes

The Philippine Coconut Producers Federation, Inc. was originally formed on 21 March 1947 by a group of coconut planters from Quezon. This group of planters organized themselves into a non-stock, non-profit corporation which they called "The Philippine Coconut Planters Association."[11]

As a corporation, it had four principal corporate purposes: first, to help increase the production of higher quality copra which would be better able to withstand foreign competition, as well as to meet the increased demand for it overseas; second, to design and implement an industrialization program for the coconut industry; third, to study the various other problems connected with the coconut industry with the end in view of mapping out a definite policy for the industry's future development; and finally, to establish a channel for the expression of the desires and needs of the people depending on the coconut industry.[12]

Ten years later, on 8 March 1957, the Securities and Exchange Commission approved an amendment to the Articles of Incorporation of the Association, allowing the Association to change its corporate name into "Philippine Coconut Producers Federation, Inc." From this amended corporate name was derived the acronym "COCOFED" by which the federation came to be more popularly known and identified. The amended Articles of Incorporation also clarified the nature of the COCOFED: it explicitly

[10] Presidential Decree 232 at Sec. 3 (f).

[11] Philippine Coconut Planters Association, Articles of Incorporation (March 21, 1947).

[12] *Id.*

provided that COCOFED shall be non-sectarian and non-political.

Twenty years after, on 17 May 1977, COCOFED amended its Articles of Incorporation once more. Interestingly enough, its new purposes and objectives paralleled the changes made by the Government in the charter of the newly created PCA. From four goals, the COCOFED set for itself six new objectives and purposes:

1. To promote the accelerated and systematic development of the coconut industry;

2. To help provide general directions for development and growth of the industry by studying and recommending, and when necessary, implement[ing] programs, projects and policies involving coconut production, research, trade and markets, processing, credit and finance, and other aspects of the industry;

3. To promote vertical integration of the coconut industry so that the coconut farmers become participants in and beneficiaries of the development and growth of the industry;

4. To help tap the potential of the coconut farmers in order to maximize their productivity and give them greater participation and responsibility in developing the industry;

5. To establish a channel for the expression of the aspirations and needs of coconut farmers and act as liaison for these mass base with the other sectors of the industry and the government;

6. To help explore and obtain possible technical and financial assistance for industry development from local and foreign sources.[13]

[13] Philippine Coconut Producers Federation, Inc., Amended Articles of Incorporation (May 17, 1977).

b. The National Board of the COCOFED: The Selection Process

COCOFED is managed by a National Board composed of fifteen directors who are elected in a national convention by provincial chapter delegates. The delegates choose, from among themselves, five directors denominated as "directors at large" and, from their respective regions of Luzon, Visayas, and Mindanao, three regional directors each.

The system of representation of coconut farmer-members, who number 1.166 million, is by general election conducted at the town level. From among themselves, the farmers elect five persons to sit as directors of the COCOFED chapter. These five persons, in turn, elect from their ranks the officers of the chapter board. The persons chosen as president and secretary-treasurer by the five directors become delegates to a provincial convention. Through a system of voting rights, the provincial delegates elect another set of five persons to sit as directors of the COCOFED provincial chapter. These five provincial directors then elect their own set of officers. The provincial chapter president and secretary-treasurer become delegates to a national convention at which they will elect, together with others of the same rank, the directors of the National Board.

c. Official Recognition and the Benefits of the Levy

COCOFED's network spans 904 town chapters and 56 provincial chapters nationwide. On 24 August 1971, the government, acting through PHILCOA (PCA), recognized COCOFED as "the national association of coconut producers with the largest number of membership."[14] This recognition was embodied in PHILCOA Board of Administrators Resolution Number 97-71, dated 24 August 1971. To date, COCOFED retains and enjoys such official status, from which it derives the right to sit in the Governing Board of the PCA.

From the fact of government recognition, COCOFED, as the representative organization of the coconut farmers, became a recipient of 9.34% of the collections[15] of the CCSF Levy, which amounted to P 905 million (1974-1984). Section 2 (a) of the "Revised Coconut Industry Code" provided for the manner in which COCOFED was to utilize the levy funds it

[14] PHILCOA Board of Administrators Resolution No. 97-71, August 24, 1971.

[15] Figures disclosed in "The Coconut Consumers Stabilization Fund (CCSF) Levy: Questions and Answers," a Pamphlet by PCGG/COCOBANK, at 11.

received: COCOFED was to channel the proceeds towards financing its developmental and operating expenses, which expenses included "projects such as scholarships for the benefit of deserving children of coconut farmers."[16]

Pursuant to the law's explicit directions, the COCOFED expended P 265 million[17] for scholarships and manpower development programs. By funding kindergarten to post-graduate level instruction for their designated beneficiaries, the COCOFED provided education to 32,000 children at the secondary and vocational levels, as well as to 8,000 young men and women at the collegiate level. It likewise financed special training in hybrid replanting and coconut cultural practices for 14,000 coconut farmers.

COCOFED chapters received direct financial assistance in the amount of P96 million, which they used as seed fund to implement small scale projects which in turn directly benefitted their respective constituents. The sum of P 144 million was spent to organize and operate a private domestic corporation engaged in copra marketing. From its share of the CCSF Levy, COCOFED returned to the coconut farmers the equivalent of P 411 million in social services and institutional support. The Philippine Coconut Research Development Foundation was likewise organized by COCOFED.

COCOFED directors have sat as members of the board of other coconut industry entities. From the inception of the United Coconut Planters Bank (COCOBANK), its board has had some national directors of COCOFED among its elected members. This trend was upset in 30 June 1986 when the Presidential Commission on Good Government (PCGG) sequestered the shares of stock owned by the coconut farmers in COCOBANK, depriving them thus of the right to vote.

The COCOFED is a member organization of the United Coconut Association of the Philippines, an umbrella grouping of the various entities involved in the coconut industry, which includes oil millers, traders, and exporters. COCOFED's president sits as a board director of the umbrella organization.

When the PCGG issued writs of sequestration over the COCOFED itself, as well as over the shares of stocks owned by the coconut farmers in the various other commercial enterprises organized and established with the use of the CCSF Levy, COCOFED, in *COCOFED et. al. v. PCGG et. al.*[18], filed

[16] Presidential Decree 1468, at Sec. 2(a).

[17] Privilege Speech by Congresswoman Maria Clara L. Lobregat at the First Session of the Congress of the Philippines (May 18, 1988).

[18] G.R. No. 75713 (1986).

before the Supreme Court a class suit for certiorari and prohibition with preliminary injunction. In the civil case entitled *Republic v. Cojuangco, et. al.*[19], COCOFED filed a class action omnibus motion before the Sandiganbayan which sought the lifting of the writs of sequestration over, among others, the COCOFED and the shares of stock of the United Coconut Planters Bank registered and distributed to the more than one million coconut farmers. They premised their prayer on the ground that no case was filed against the farmers or their companies, as required by the 1987 Constitution in Article XVIII, Section 26, third paragraph.[20] In accordance with its duty to uphold and protect the interests of the coconut farmers, COCOFED is now before the courts seeking relief.

B. The Coconut Levy As Seed Fund

The concept of a levy, which is shouldered by the very group or class of people it intends to benefit, is not new to the Philippine experience.

1. THE AMERICAN REGIME LEVY

In the case of the coconut industry, the first known levy was imposed under the American regime. On 4 February 1916, the Philippine Legislature enacted Public Act Number 2598 which authorized "a deduction from the net profits of the transactions of the dryer or factory."[21] This law also created a Philippine Products Board whose function was to improve the production of copra by assisting in the establishment of copra dryer or factories for extraction of coconut oil. The Philippine Products Board was directed to organize corporations and cooperatives among the owners of the coconut plantations, to use the deductions from the net profits of the dryers or factories to liquidate the capital invested, and, more importantly, to distribute the surplus of the fund proportionately among the owners of the lands and

[19] Civil Case No. 0033 before the Honorable First Division, Sandiganbayan.

[20] The third paragraph reads: "[t]he sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided." PHIL. CONST. Art. XVIII, Sec. 26 (3).

[21] P.A. 2598, Sec. 3-a (1916).

coconuts.[22]

2. THE MARCOS REGIME LEVIES

Under the administration of former President Ferdinand E. Marcos, two distinct levies were imposed and used for the development of the coconut industry and for the ultimate benefit of more than one million coconut farmers. The first levy was authorized by Republic Act Number 6260; the second levy, by Presidential Decree Number 276.

On the one hand, the first levy under Republic Act 6260 is relevant, because the coconut farmers who registered their COCOFUND receipts in accordance with the provisions of the Act eventually became the original stockholders of the United Coconut Planters Bank. On the other hand, the second levy is significant in that a portion of it was used to acquire a commercial bank for and in behalf of the coconut farmers.

a. Republic Act Number 6260[23]

Republic Act 6260, "An Act Instituting A Coconut Investment Fund and Creating a Coconut Investment Company For the Administration Thereof," was enacted by the Seventh Congress of the Philippines on 17 June 1971. The bill in the Lower House was sponsored principally by the Liberal Party led by Messrs. Moises Escueta, together with Mitra, Veloso, Gustilo, Mate, and Chiongbian. Its counterpart version in the Senate, however, was more fortunate, because it enjoyed bi-partisan support with the sponsorship of Messrs. Pelaez, Aytona, Tañada, and Benitez.

1) Features

The salient features of Republic Act 6260, better known as the "COCOFUND LAW, " are as follows:

a) National Policy: Accelerated Development of the Coconut Industry

It declared the acceleration of the development of the coconut

[22] *Id.* at Sec. 2.

[23] AN ACT INSTITUTING A COCONUT INVESTMENT FUND AND CREATING A COCONUT INVESTMENT COMPANY FOR THE ADMINISTRATION THEREOF, Republic Act No. 6260, Sec. 2, 6, 7, 8 (1971).

industry as a national policy. This declared national policy to be given impetus by providing adequate medium and long-term financing for capital investment through the institution of the Coconut Investment Fund capitalized and administered by coconut farmers through a Coconut Investment Company.

b) Coconut Investment Company: Creation and Capitalization

The COCOFUND law created a company known as the Coconut Investment Company capitalized at P100M. In order to raise the required capitalization, Republic Act 6260 authorized the collection of a levy, hereinafter referred to as the "COCOFUND LEVY," to be paid by the coconut farmers.

The levy, pegged at P 0.55 per 100 kilos of copra or its equivalent in other coconut products, was imposed on the first domestic sale. After payment, the farmer would be issued a receipt, called the "COCOFUND RECEIPT," which would be converted into shares of stock of the Coconut Investment Company upon its incorporation as a private entity.

Until P100M shall have been collected and provided that collection shall not extend beyond ten years from approval of the Act, the fund shall be held in trust by the government through its designated agent, the PCA (then PHILCOA). The fund was exclusively reserved for the payment of the subscription by the Philippine Government for and in behalf of the coconut farmers. Upon full payment of the capital stock, or at the termination of the ten year period, whichever comes first, the shares of stock held by the Philippine Government would be transferred to and in the name of the coconut farmers. These farmers would, in turn, incorporate into a private entity.

c) The Allocation of the Levy's Proceeds

Of the P 0.55 collected, P 0.50 was set aside for the fund; while P 0.03 was allocated to PCA to answer for operating expenses incurred in the collection of the fund, for conventions conducted among coconut farmers, and for the production and dissemination of information. The remaining P 0.02 would be given to the recognized national association of coconut producers with the largest membership, as determined by PHILCOA (PCA). This amount was to be used by the recognized association for the maintenance and operation of its principal office, which was made the liaison between the different sectors in the coconut industry, the government, and the mass base.

d) The Goal: Grant Loans to Finance Coconut Industry Enterprises

When incorporated as a private entity, the Coconut Investment Company would be empowered "to grant medium and long term loans to Filipino citizens or enterprises, at least 70% of the capital stock is owned by Filipinos, for the purpose of financing the establishment, development and expansion of new and/or existing coconut agricultural, industrial, or other productive enterprises..."[24]

Moreover, the Company could invest in shares of stocks in corporations whose equity was at least 70% Filipino-owned, to finance the establishment, development, and expansion of new or existing industrial, financial, or marketing enterprises. The Coconut Investment Company was further authorized to set up subsidiaries for the purpose of operating oil mills and coconut centrals.

2) The COCOFUND LAW in action

In 1971, the PHILCOA (PCA) recognized the COCOFED as the national association of coconut producers, in accordance with its duty under the law. In tandem with COCOFED, the PCA set in motion the machinery and mechanics by which coconut farmers could register their COCOFUND Receipts.

The PCA designated the COCOFED town chapters as its registration agents. It required the coconut farmers to register their receipts, indicating their names, address, volume of copra sold, as well as the denominations of the receipt which ranged from a minimum of P 0.55 for a base of 100 kilograms of copra to a maximum of P 5.50 for 1,000 kilograms of copra or equivalent coconut products.

The COCOFED chapters kept a masterlist of COCOFUND Receipt Holders, prepared monthly in quadruplicate, and transmitted three sets of this list to the PCA Central Office in Manila. The PCA thereafter computerized the data, assigning a producers' code number for every coconut farmer/receiptholder. This masterlist came to be known in the industry as the "PCA-IBM Masterlist of Registered COCOFUND Receiptholders." When the United Coconut Planters Bank first distributed the certificates of stock in 1976, the farmers listed in the PCA-IBM Masterlist were the recipients.

b. Presidential Decree Number 276[25]

[24] *Id.* at Sec. 5 (a).

[25] ESTABLISHING A COCONUT CONSUMER STABILIZATION FUND, Presidential Decree No. 276, Sec. 1 (a), (b), and Sec. 2 (1973).

In 1973, a consumer crisis rocked the economy and, correspondingly, the government. The crisis was precipitated by the OPEC oil embargo, the devaluation of our currency, and the spiralling of prices. Meanwhile, coconut oil commanded high prices abroad.

Philippine consumers reeled from the impact of the reduced purchasing power of the peso. Prices of consumer goods such as sugar, cement, and coconut-based consumer products became prohibitive. Cooking oil, laundry bar soap, and filled milk quickly disappeared from the market shelves. Manufacturing costs for these consumer products increased, as copra, the raw material, commanded higher prices.

Thus, representatives from various sectors of the coconut industry were summoned to a meeting held at Camp Aguinaldo and were instructed to hammer out a proposal to meet the crisis. The group was given 72 hours to come up with their recommendations. Presidential Decree 276 is the result of that meeting at Camp Aguinaldo, at which the representatives of the industry "proposed the implementation of an industry-financed stabilization scheme which will permit socialized pricing of coconut-based commodities."[26]

Presidential Decree 276 established a Coconut Consumer Stabilization Fund (CCSF) and authorized the PCA to collect by way of a levy the amount of P 15.00 per 100 kilograms of copra or its equivalent in other coconut products. The levy would be imposed upon every first domestic sale. The mechanics for collection followed the system established under the COCOFUND Law (Republic Act 6260). The proceeds of the levy (CCSF Levy) would be utilized to subsidize the sale of coconut-based products at the prices set by the Price Control Council.

The collection of the CCSF Levy commenced on 10 August 1973 and was to be sustained for one year, unless terminated earlier, upon the PCA's determination that a crisis no longer existed. Any surplus not expended in payment of subsidy would revert to the Coconut Investment Fund created under the COCOFUND Law.

Presidential Decree Number 414, dated 18 April 1974, amended the PCA Charter and included new provisions affecting the CCSF Levy. The more notable of these amendments are the following:[27]

1) Base Price and Levy Mechanics

The amendment granted to PCA the power to determine the base

[26] *Id.* at second Whereas Clause.

[27] Presidential Decree 414, at Sec. 2 and 3-a.

price of raw materials upon which would be pegged the subsidy. Likewise, the PCA was given the authority both to review and revise the CCSF Levy rate. The PCA could also recommend to the President the lifting, suspension, or termination of the collection. These powers were lodged with a Committee created under Presidential Decree 276.

2) Indefinite Period for Collection

The amendment extended for an indefinite period the collection of the CCSF Levy, which was originally set to be terminated at the end of one year.

3) Expanded Use of Funds

The amendment enlarged the scope of the purposes to which the proceeds of the CCSF levy could be applied, by allowing a portion of the CCSF Levy to be set aside for investment in processing plants, research and development, as well as extension services.

The rationale for extending indefinitely the collection period of the CCSF Levy was articulated in the fourth whereas Clause of Presidential Decree 414, which read:

> WHEREAS, there is a need to maintain domestic prices of coconut-based consumer products at reasonable levels without eliminating the benefits of high export earnings and unduly reducing farmers' incomes; and to redirect inflationary excess profits into developmental investments by directly capitalizing industrial enterprises for and in behalf of the mass producers.[28]

Even as the clause indicates an intention to make investments by directly capitalizing industrial enterprises for and in behalf of the coconut farmers, the expanded utilization of the CCSF Levy seems to have delimited investments to processing plants. There likewise arose confusion with respect to the ownership of these investments, since no mention of their ownership was made in Presidential Decree 414.

Naturally, the coconut farmers were none too happy about the fact that the manufacturers of coconut-based consumer products, many of whom were multi-nationals, continued to benefit from the CCSF Levy while the farmers struggled with problems of credit and financing and improving farm productivity. COCOFED called Government's attention to these grievances, and succeeding laws re-directed the use of the CCSF Levy. Thus, in 1975,

[28] *Id.* at Fourth Whereas Clause.

Presidential Decree Number 755 paved the way for the acquisition of a commercial bank for and in behalf of the farmers.

c. Presidential Decree Number 755

Presidential Decree 755 was issued on 29 July 1975 and is entitled "Approving the Credit Policy For the Coconut Industry Recommended By the Philippine Coconut Authority And Providing Funds Therefor."

Under its charter, the PCA was tasked with the formulation of a unified credit policy affecting the production, marketing, and processing of coconut, as well as with the corresponding duty to recommend to the President adoption of these policies. By way of an appeal, the COCOFED National Board proposed to the PCA in 1975 that the most efficient method of responding to and solving the perennial credit problems of the coconut farmers was for the latter to own a bank. PCA agreed. The result: Presidential Decree 755.

Section 1 of PD 755 enunciated as national policy that the coconut farmers be provided with readily available credit facilities at preferential rates.[29] To implement this declared policy, the PCA was authorized to execute the "Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers," whose provisions would be incorporated into the decree by reference. Further, the PCA was authorized "[t]o *distribute for free, the shares of stocks of the bank it acquired to the coconut farmers* under such rules and regulations it may promulgate."[30]

Presidential Decree 755 decreed, in addition, that the PCA draw and utilize the collections from the CCSF Levy to answer for the financial commitments of the farmers under the "Agreement". All CCSF Levy collections, save for the PCA's budgetary requirements, were to be deposited with the bank of the coconut farmers. Likewise, 50% of another levy collected for and devoted to the national hybrid replanting program was to be deposited with the bank. The deposits would be interest-free and were not to be withdrawn until the bank is "ascertained to have sufficient equity capital to be in a financial position to service in full the credit requirements of the coconut

[29] APPROVING THE CREDIT POLICY FOR THE COCONUT INDUSTRY RECOMMENDED BY THE PHILIPPINE COCONUT AUTHORITY AND PROVIDING FUNDS THEREFOR, Presidential Decree No. 755, Sec. 1 (1975).

[30] *Id.*

farmers."[31]

C. The United Coconut Planters Bank

The coconut farmer's acquisition of a commercial bank was dictated by fate.

In 1975, the COCOFED National Board requested the PCA to appropriate the amount of P 90 million for the purchase of fertilizers, tractors, and other farm implements. The COCOFED meant to distribute the equipment for free to the coconut farmers as they were almost always invariably short of funds and wanting in credit. The Chairman of the PCA then was Senator Enrile. He torpedoed the proposal stating that dole outs were merely palliative in nature; they did not and would not provide for a permanent solution to the farmers' financial and credit requirements. Instead, Senator Enrile counseled COCOFED on the advisability of establishing their own financial institution to service the farmers' credit needs. At that time, however, the Central Bank prohibited the opening of new banks. The COCOFED thus asked Senator Enrile to help them identify existing banks that may be receptive to investment from the coconut farmers group.

1. THE NEGOTIATIONS

On 17 May 1985, Senator Enrile, who was, at that time, concurrently Chairman of the PCA as well as Chairman of the COCOFED National Board, reported that Mr. Eduardo M. Cojuangco, Jr. possessed the exclusive option to acquire at least 60% of the outstanding equity in First United Bank.

Thus, the COCOFED Board authorized Mrs. Maria Clara L. Lobregat, first, to confer with Mr. Cojuangco to determine whether he would be agreeable to exercising his exclusive option in First United Bank and thereafter transfer the equity acquired to the coconut farmers. Second, the COCOFED Board also instructed Mrs. Lobregat to make representations with the PCA Governing Board in order to convince the latter to invest in the acquisition of a bank for and in behalf of the coconut farmers, who will eventually and ultimately own the bank. Mr. Eduardo Cojuangco, Jr. agreed; the PCA consented, as did the owners of the First United Bank.

2. THE AGREEMENTS

As a result of the successful preparatory negotiations towards the purchase of First United Bank, two agreements were executed to cover both stages of the acquisition, the first stage being the transfer of the shares of stock from the owners of the bank to Mr. Cojuangco, and the second stage being the transfer of the equity purchased from Mr. Cojuangco to the PCA.

[31] *Id.* at Sec. 2.

a. The First Agreement

The first agreement, dated May 1975, was concluded between Mr. Pedro Cojuangco, for himself and in behalf of other stockholders as seller, and Mr. Eduardo Cojuangco, Jr. (represented by his attorney-in-fact, Senator Angara), for himself and in behalf of others as buyer. The terms and conditions of the Agreement were as follows:

1) The Sellers

The sellers own of record and beneficially a total of 137,866 shares of common stocks of the First United Bank, each share with a par value of P 100.00. Among the sellers were President Corazon Aquino and her family;

2) The Price

The sellers agree to sell the shares and the buyer agrees to purchase the shares for the price of P200.00 each share for a total sum of P27,573,200.00; and

3) Unencumbered stock certificates

The sellers shall deliver the stock certificates representing the shares free from all liens, encumbrances, obligations, liabilities, and other burdens in favor of the Bank or other third parties.

b. The Second Agreement

The second contract, which was entered into on 25 May 1975, is styled as an "Agreement For the Acquisition of A Commercial Bank For the Benefit of the Coconut Farmers of the Philippines." The parties to this subsequent Agreement were Mr. Eduardo Cojuangco, Jr., as seller, and the Philippine Coconut Authority, for itself and for the benefit of the coconut farmers of the Philippines, as buyer. The pertinent terms and conditions are outlined below:

1) The Shares

The number of shares under the exclusive option to purchase of Mr. Eduardo Cojuangco is 144,400 (Option Shares) representing 72.2% of the outstanding capital stock of First United Bank (Bank);

2) The Price

The seller is willing to transfer his Option Shares to the buyer at the price of P 200.00 each share;

3) Capitalization Requirement

In order to comply with a Central Bank program requiring the increase in capitalization of banks to at least P 100 million, the buyer shall subscribe to shares with a combined par value of P 80,864,000.00, which subscription shall be for the benefit of the coconut farmers. The Subscribed Shares were to be issued from both the present authorized but unissued shares as well as from the increased capital stock of the Bank from P 50 million to P 140 million. The subscription for the latter block of shares would be deemed made upon the approval by the stockholders of the increase in the authorized capital stock;

4) The Management Contract

To assure stability in the Bank and continuity of management and credit policies, a Management Contract shall be approved between the seller and the Bank with the following terms:

> i) the Management Contract shall be for a period of five years renewable for another five years by mutual agreement of Mr. Cojuangco and the Bank;
>
> ii) Mr. Eduardo Cojuangco shall be elected President to serve at the pleasure of the Board and he shall recruit and develop a professional management team to manage the Bank under the control and supervision of the Board. Mr. Cojuangco shall not receive compensation for managing the Bank other than those due to him by virtue of his position and functions as President; and

> iii) The PCA shall cause three persons designated by Mr. Cojuangco to be elected to the Board of Directors;

5) Mr. Cojuangco's Compensation

As compensation for exercising his Option Shares and for transferring the shares to the coconut farmers, Mr. Cojuangco shall receive one share for every nine shares acquired by the farmers, for a total of 95,304 shares. In order to prevent dilution of Mr. Cojuangco's equity position, the PCA shall cede over 64,980 fully paid shares out of the Subscribed Shares;

6) Loans to Farmers

Loans at preferential rates of interest shall be made available to the coconut farmers from a significant portion of the equity capital paid in by the farmers;

7) Distribution of Shares

The PCA shall distribute the shares held by it for the benefit of the coconut farmers to farmers holding COCOFUND Receipts on such equitable basis to be determined by PCA;

8) Exercise of Pre-emptive Rights

Pre-emptive rights with respect to the unissued portion of the authorized capital stock or any increase in such shall be denied the shares held by coconut farmers to ensure that not only existing coconut farmers but future coconut farmers may become owners of the Bank; and

9) Corporate Name

The corporate name shall be changed from First United Bank to First United Coconut Bank so that farmers may easily and readily identify with the Bank.

The cost of acquisition of the controlling equity interest which represented 72.2% in the erstwhile First United Bank, now the United Coconut Planters Bank (COCOBANK), was P 28,880,000.00, paid from out of the CCSF Levy. Additional equity, still funded by the CCSF Levy, amounted to P 80,864.000.00. There is likewise an added sum of P

5,776,000.00 categorized as subscription deposit. These figures were culled from a report prepared by the PCA entitled "Statement of Coconut Levy/Assessment Collections, Allocations, Legal Authority, Amount, Fund Administrator and Benefits."

The PCGG's sequestration of the shares of the coconut farmers in COCOBANK on 26 June 1986, affected over 1,405,366 farmers-stockholders, who owned, in the aggregate, 387,037,427 shares representing 51.8% of the outstanding capital stock entitled to vote. And at the annual stockholders meeting of COCOBANK, PCGG exercised the right to vote not only this 51.8%, but a total of 94.4% of the outstanding capital stock entitled to vote, which were covered by writs of sequestration.

II. SEQUESTRATION OF COCOBANK SHARES

A. The Presidential Commission On Good Government (PCGG): Its Powers and its Exercise Thereof

For five long days in February 1986, the Philippines held captive the rapt attention of the world community. An iron-fisted dictator, in power for over twenty years, was overthrown with nary a drop of blood shed, by a widow and an avowed housewife. What is now known as "People Power" installed a new administration with President Corazon C. Aquino at the helm.

Among the first acts of President Aquino was the issuance on 25 March 1986 of Proclamation Number Three, declaring as one of the national policies the implementation of the reforms mandated by the people. The Proclamation likewise adopted a Provisional Constitution which, in Article II, detailed the measures intended to effectuate this mandate. Among the tasks to be prioritized by the new government was the "recover(y) of ill-gotten wealth amassed by the leaders and supporters of the previous regime and protect(ion) of the interest of the people through orders of sequestration or freezing of assets and of accounts."[32]

Pursuant to this Proclamation, several Executive Orders were promulgated creating the Presidential Commission on Good Government (PCGG) and defining its role and powers.

1. EXECUTIVE ORDER NUMBER 1

Executive Order Number 1, issued on 28 February 1986, created the

[32] PROVISIONAL CONSTITUTION, PROCLAMATION NO. 3, Art. II Sec. 1(d) (1986).

Presidential Commission on Good Government to assist the President in three primary tasks: first, the recovery of all the ill-gotten wealth amassed by Marcos and his cronies during the height of their power and influence; second, the investigation of cases involving graft and corruption which had been assigned to the PCGG by the President; and third, the adoption of safeguards in order to prevent the recurrence of corrupt practices in the new administration, as well as the institution of measures to deter corruption.

With respect to the recovery of ill-gotten wealth, the PCGG, under Executive Order No. 1 Sec. 3, was granted the power and authority to do the following:

> (a) conduct investigation as may be necessary in order to accomplish and carry out the purposes of this order;
>
> (b) sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found and any records pertaining thereto, in order to prevent their destruction, concealment, or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task;
>
> (c) provisionally take over in the public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transaction leading to such acquisition by the latter can be disposed of by the appropriate authorities; and
>
> (d) enjoin or restrain any actual or threatened commission of acts by any person or entity that may render moot and academic or frustrate or otherwise make ineffectual the efforts of the Commission to carry out its tasks

under this order.[33]

2. EXECUTIVE ORDER NUMBER 2[34]

Executive Order Number Two, issued by President Aquino on 12 March 1986, caused the freezing of all assets and properties located in the Philippines in which former President Marcos, his wife, their relatives, close business associates, agents, or dummies had any interest or participation. Executive Order No. 2 likewise prohibited any person, by himself or by way of assisting another, from transferring, conveying, encumbering, depleting, concealing, or causing the dissipation of the properties and assets covered by the freeze order.

Further, Executive Order No. 2 authorized the PCGG to request and appeal to foreign governments where any of the alleged ill-gotten wealth may be found; to order the freezing of these assets; or to prevent any acts of disposition or concealment, pending the outcome of proceedings in the Philippines which were instituted to ascertain whether these properties and assets were unlawfully acquired.

3. EXECUTIVE ORDER NUMBER 14[35] and 14-A[36]

Executive Order Number Fourteen, issued on 7 May 1986, and Executive Order Number Fourteen-A, issued in August 1986, enlarged the powers of the PCGG by conferring upon it the authority to file and prosecute, with the assistance of the Office of the Solicitor General, all cases which it investigated pursuant to the powers granted to it by Executive Order No. 1 and Executive Order No. 2.

The orders directed that all cases involving ill-gotten wealth be filed before the Sandiganbayan. Moreover, the PCGG was given the authority to extend immunity from criminal prosecution to any person who either provides information or testifies as to the unlawful manner of acquisition of the

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

[34] FREEZING OF ASSETS, Executive Order No. 2 (1986).

[35] JURISDICTION OVER ILL-GOTTEN WEALTH CASES, Executive Order No. 14 (1986).

[36] Amending Executive Order No. 14, Executive Order No. 14-A (1986).

properties subject of the investigation or suit.

4. THE FOUR POWERS OF THE PCGG

The powers conferred on the PCGG by the four Executive Orders in order to enable it to assist the President in recovering ill-gotten wealth may be simplified into four major categories.

First, the PCGG possesses the power to investigate matters concerning ill-gotten wealth, as delineated in Executive Order Nos. 1, 2, 14, and 14-a. The power to investigate is buttressed by the powers to issue subponae and to hold persons in direct or indirect contempt. Second, the PCGG is also vested with the power to issue writs of sequestration, freeze orders, or hold orders. Third, it has the authority to file and prosecute cases involving the recovery of ill-gotten wealth. And fourth, the PCGG is empowered to grant immunity from criminal prosecution. It must be noted that the vesting of powers on the Commission was done under the aegis of the Provisional Constitution, which authorized the President of the Philippines to exercise legislative powers.

For the past four years, the PCGG has exercised, in addition to the four powers enumerated above, two other powers that are neither mentioned nor contained in any of the PCGG Executive Order's. The first is the Commission's exercise of the right to vote the shares it sequestered; the second is the power to compromise. The exercise of these two powers have, at the very least, engendered much debate.

B. Sequestration of Shares in Cocobank: Its Grounds and the Response of Shareholders

The PCGG, in the exercise of the powers granted to it by the President, issued and served three separate writs of sequestration over the shares of stocks in COCOBANK.

1. THE WRITS OF SEQUESTRATION

On 6 June 1986, the PCGG sequestered shares representing 35.6% of the outstanding capital stock entitled to vote. These shares were issued to Eduardo Cojuangco Jr., ECJ and Sons, Balete Ranch Inc., Christensen Plantation, Danilo S. Ursua, Jesus Pineda, Narciso Pineda, Metroplex Commodities, Inc., Lucena Oil Factory, Inc., and PCY Oil Manufacturing

Commodities, Inc.[37]

On 30 June 1986, a second writ of sequestration was issued covering 59,385,594 shares, representing 7.9% of the outstanding capital stock issued to COCOLIFE, Cagayan de Oro Oil Mills, Inc., Granexport Manufacturing Corporation, Iligan Coconut Oil Mills, Inc., Legaspi Oil Mills, Inc., and Southern Luzon Coconut Oil Mills, Inc.[38]

And still on 30 June 1986, by virtue of a third writ of sequestration dated 26 June 1986 and served upon COCOBANK's Chairman of the Board, the President, and the Corporate Secretary, the PCGG sequestered 387,037,427 shares belonging to 1,405,366 coconut farmers and representing 51.8% of the outstanding capital stock entitled to vote.[39]

Collectively, the shares sequestered by the three writs represented 94.4% of the outstanding capital stock entitled to vote.

2. PCGG VOTES THE SHARES

But the PCGG did not stop at merely sequestering the COCOBANK shares. Using the voting power represented by these shares, the PCGG installed all fifteen of its nominees into COCOBANK's Board of Directors. The PCGG justified this action by pointing to a 26 June 1986 memorandum issued by President Aquino, which authorized the PCGG to vote the sequestered shares of stock at all stockholders' meetings. As enumerated in the Memorandum from the President, the PCGG is authorized to vote on the following matters:

> Consistent with Executive Order Nos. 1, 2, and 14, as regards recovery of ill-gotten wealth, the Commission is authorized to vote such shares of stock...at all stockholders' meetings called for:
>
> 1) the election of directors;
> 2) declaration of dividends;
> 3) amendment of the articles of incorporation;
> 4) adoption and amendment of by-laws;
> 5) sale, lease, exchange, mortgage, pledge, or other disposition of all or substantially all of corporate properties;
> 6) incurring, creating, increasing bonded indebtedness;
> 7) increase or decrease of capital stock;
> 8) merger or consolidation of the corporation with another or other corporation;
> 9) investment of funds in another corporation or business for purposes other than the primary purpose for which it was organized;
> 10) for similar purposes, pending the outcome of the proceedings to determine the ownership of said shares of stock. (Numbering supplied).[40]

[37] Certification of Quorum, Minutes of the Adjourned Stockholders' Meeting of the United Coconut Planters Bank (June 30, 1986) at 2.

[38] *Id.*

[39] *Id.* at 3.

3. THE RESPONSE

Needless to say the response of the farmer-stockholders was nothing short of tumultuous, and the protests which they raised, vehement. They decried the sequestration of the shares and questioned its legal basis by arguing that the farmers do not properly fall within any of the categories susceptible to sequestration. They were not close relatives, subordinates, business associates, dummies, agents, or nominees of former President Marcos.

Each item of the agenda - from the certification of a quorum to the election of directors - was hotly contested. It bears mentioning that had not PCGG's sequestration covered 94.4% of the voting stock, the actual quorum would have reached only 49.58%. When the farmer-shareholders ascertained that they would not be allowed to vote during that meeting, they walked out *en masse* even before the actual voting had taken place.

It would not be amiss to point out that the 30 June 1986 Annual Stockholders' Meeting of COCOBANK was the first opportunity for

[40] Memorandum (June 26, 1986).

thousands of coconut farmers to actively participate in a stockholders' meeting, either for themselves or as proxy holders. For the past ten years, a Management Contract was in effect as part of the agreement undertaken with respect to the bank's acquisition for the benefit of the coconut farmers. It was only in 1986 that this contract was terminated. Thus, one can appreciate the farmers' great expectations and resultant frustration and rage at the turn of events at that eventful stockholders' meeting.

4. COCOFED V. PCGG: GOING TO WAR

On 3 September 1987, the COCOFED for itself and in representation of more than one million coconut farmers, filed against the PCGG a class suit for certiorari and prohibition with preliminary injunction before the Supreme Court. This eventually became the case of *COCOFED et.al. v. PCGG, et.al.* COCOFED challenged the PCGG's jurisdiction over the sequestered properties for several reasons. For one, the COCOFED argued that coconut farmers were not encompassed by any of the classes prone to sequestration, such as "close relatives, business associates, subordinates, nominees, dummies or agents of former President Marcos."[41] For another, the sequestered properties, which were acquired by the farmers in the companies organized and established with the use of the levy funds, as well as the investments made out of the coconut levies' proceeds, were not ill-gotten wealth. The acquisition and ownership by the coconut farmers of these assets were mandated by laws. The sequestration, therefore, was a gross abuse of prosecutorial discretion. COCOFED also raised violations of the Bill of Rights including, among others, the right to due process and equal protection, the prohibition on ex post facto laws and bills of attainder, expropriation without just compensation, the right to be presumed innocent, and violation of the freedom of association.

For its part, the PCGG posited that the coconut levies were public funds "which no amount of pronouncements to the contrary - by decree or any other presidential issuance - can convert into private money."[42] The report of the Commission on Audit, which it made upon its examination of the funds, revealed that the collections from the levies were misappropriated and squandered not only by President Marcos but also by his cronies and leaders of the coconut industry. Thus "the Solicitor General believed that the so-called 'more than one million coconut farmers' do not own the coconut

[41] COCOFED et. al. v. PCGG, *supra* note 18.

[42] *Id.* at 15.

levy funds or the assets acquired therewith."[43]

On 2 October 1989 the Supreme Court dismissed the petition (COCOFED, et al. v PCGG, et al. GR # 75713). In resolving the case the Honorable Supreme Court declared:

> The petitioners deny PCGG's postulations and assertions. It is of course not for this Court to pass upon the factual issues thus raised. That function pertains to the Sandiganbayan in the first instance. For purposes of this proceeding, all that the Court needs to determine is whether or not there is *prima facie* justification for the sequestration ordered by the PCGG. The Court is satisfied that there is. The cited incidents given the public character of the coconut levy funds, place petitioners COCOFED and leaders and officials at least *prima facie* squarely within the purview of Executive Order Nos. 1,2 and 14, as construed and applied in Baseco...[44]

On addressing the theory advanced by the government that the coconut levies are public funds, the Supreme Court, through Associate Justice Narvasa, determined:

> [T]he utilization and proper management of the coconut levy funds raised as they were by the State's police and taxing powers are certainly the concern of the government. It cannot be denied that it was the welfare of the entire nation that provided the prime moving factor for the imposition of the levy. It cannot be denied that the coconut industry is one of the major industries supporting the national economy. It is, therefore, the State's concern to make it a strong and secure source not only of the livelihood of a significant segment of the population but also of export earnings the sustained growth of which is one of the imperatives of economic stability. *The coconut levy funds are clearly affected with public interest. Until it is demonstrated satisfactorily that they have legitimately become private funds,* they must, *prima facie* and by reason of the circumstances in which they were raised and accumulated, be accounted subject to the measures prescribed in Executive Order 1, 2 and 14 to prevent their concealment dissipation, etc.; which measures include the sequestration and other

[43] *Id.*

[44] *Id.* at 18-19.

orders of PCGG complained of.[45] (italics supplied)

In the intervening period during the pendency of the Petition for Certiorari, the Republic of the Philippines, represented by PCGG, filed before the Sandiganbayan, on 31 July 1987, a complaint docketed as Civil Case No. 0033 for "Reconveyance Reversion Accounting Restitution Damages," which was entitled *Republic of the Philippines vs. Eduardo M. Cojuangco, Jr., et al.* On 5 October 1988, the COCOFED filed a motion to dismiss, raising, as one of its grounds, the failure of the Court to acquire jurisdiction over the subject matter in Civil Case No. 0033, since the coconut farmers, who are the registered and actual owners of the investments sought to be forfeited, have not been included as defendants. The Sandiganbayan, on 6 March 1989, denied COCOFED's motion, stating that the shares of stock of the coconut farmers were not being sought to be forfeited. In paragraphs 3 and 4 of this Resolution, the Sandiganbayan said that the pleadings did not indicate that the sequestered shares belong to defendants other than the coconut farmers; thus, the Sandiganbayan must assume that the investments enumerated by the Republic are in the names of the more than fifty named defendants and are owned and enjoyed by them.[46]

With the pronouncement of the Supreme Court in *COCOFED, et al. v PCGG, et al.*[47] which permitted the coconut farmers "to demonstrate satisfactorily that the levy funds have legitimately become private funds," the COCOFED filed on 29 November 1989, a class action omnibus motion. It asked that the Sandiganbayan lift the writs of sequestration, on the ground that the PCGG had not complied with the constitutional provision that required, as a condition, the filing of the corresponding judicial action or proceeding within the prescribed period.

On 15 November 1990, the Sandiganbayan promulgated a resolution on the class action omnibus motion declaring that the writs of sequestration were deemed automatically lifted for PCGG's failure to commence, within the period prescribed by the Constitution, the corresponding judicial action against the corporations sequestered and the other real parties in interest. This declaration, however, was qualified by the Sandiganbayan to "be without

[45] *Id.* at 21-22.

[46] Sandiganbayan Resolution of Motion to Dismiss (of Defendant Lobregat), Civil Case No. 0033 at 6 (March 6, 1989).

[47] *Supra* note 18.

prejudice to PCGG's applying for other appropriate writs before this Court."[48]

COCOFED sought a partial reconsideration of the resolution, questioning, among other issues, the Sandiganbayan's qualification of "without prejudice." The PCGG elevated the Sandiganbayan's resolution declaring the lifting of the sequestration to the Supreme Court by certiorari in a petition entitled *Republic of the Philippines v. The Honorable Sandiganbayan.*[49] The petition is still pending before the Supreme Court.

C. Practical Import of Sequestration of Shares on Control and Management of Cocobank.

PCGG controls 94.4% of COCOBANK's outstanding capital stock entitled to vote, and it was empowered by the President to exercise the voting rights attached to these sequestered shares. The PCGG did not, however, vote the shares only once, but twice: the first time in June 1986, and the latest instance on 5 March 1991 during the annual stockholders' meeting.

PCGG has not only voted the shares, it has also managed and operated COCOBANK by defining credit policies, determining the recipients of loanable funds, controlling access to the bank's records, deciding on investments and dictating which shares transferred *after* sequestration can be recognized as legitimate transfers and, consequently, recorded in the stock and transfer books.

No dividends have been declared since 1986. In prior years from 1978 to 1984, 615 million shares corresponding to stock dividends were received by the farmer-shareholders.[50] In 1979, cash dividends in the sum of P 52.6 million were paid to the stockholders.[51]

During the 30 June 1986 stockholders meeting of COCOBANK the PCGG informed the stockholders that a revalidation project shall be implemented respecting the common shares owned by the farmers. The PCGG, through Messrs. Diaz and Daza, represented that once the shares shall have been revalidated, one of two things would happen: either the

[48] Sandiganbayan Resolution of COCOFED Class Action Omnibus Motion, Civil Case No. 0033 (November 15, 1990).

[49] G.R. No. 96073 (1990).

[50] PCGG/COCOBANK Pamphlet, *supra.* note 15, at 10.

[51] *Id.*

sequestration would be lifted or the farmers would be allowed to vote.[52]

Revalidation was defined by PCGG as "the entire process of confirming the validity through inventory, physical examination or verification of individual stock certificates..."[53] The 25 May 1988 "Shares Revalidation Report," which was submitted by the Executive Committee for Revalidation and addressed to the COCOBANK Board of Directors, cited as a "significant highlight" that, as of 15 May 1988, more than 600 thousand coconut farmers-stockholders presented almost 300 million UCPB shares for validation. Thirty two percent of the outstanding shares were considered revalidated. Yet to this date, these shares remain sequestered, and their owners deprived of their right to vote.

On many occasions, the UCPB Stock and Transfer Office has refused requests from heirs of deceased coconut farmers-stockholders to accept the transfer and registration of the shares in the names of the heirs, since these functions had been suspended on account of sequestration. But the Office is not always so consistent, as in the case of Mr. Chua Lee King. In two letters with several attachments dated 25 March 1988 and 18 January 1990, Mr. Chua Lee King requested the COCOBANK Chairman to allow the revalidation and subsequent transfer to his group of some 61 million common shares of COCOBANK. From the notations of the PCGG-elected Chairman, it appears that the request was to be expedited. Mr. Chua Lee King, also known as Mr. Enrique Chua, asserted that he and his group are the new owners of the shares. This alleged new acquisition violates Article IX of COCOBANK's Articles of Incorporation that sets a maximum ceiling for ownership of shares by any one person.

The extent and impact of PCGG's control of 94.4% of COCOBANK's outstanding capital trenches upon the management and operations of other companies and investments administered by COCOBANK as trustee. Under Presidential Decree Number 1468, promulgated on 11 June 1978 and known as the "Revised Coconut Industry Code," COCOBANK was granted the authority and the corresponding duty to make equity investments for the benefit of the coconut farmers in corporate enterprises and undertakings

[52] Proceedings of the Annual Stockholders' Meeting of COCOBANK (June 30, 1986) (videotaped material).

[53] PCGG Rules and Regulations for the Judicious and Expeditious Revalidation of the United Coconut Planters Bank Common Shares Owned By Legitimate Coconut Farmers, Sec. 2 (February 13, 1987).

relating to the coconut and palm oils industries,[54] as well as to distribute these investments for free to the coconut farmers.[55]

When COCOBANK was sequestered, it was then administering the sum of P 4.7 billion representing 49.03% of the total proceeds of the CCSF levy.[56] COCOBANK had invested P 2.5 billion of this fund in oil mills and a life insurance company, among several investments.[57] The PCGG elects the directors of these corporations.

III. PCGG'S POWER OF SEQUESTRATION: ITS NATURE AND LIMITS AS INTERPRETED BY THE SUPREME COURT

The soundness and propriety of the PCGG's sequestration of the coconut farmers' shares of stock, as well as its subsequent exercise of acts of ownership over these shares will be better examined in the context of the experience of other similarly situated firms whose cases have been settled by the Supreme Court.

In a series of decisions beginning with *BASECO v. PCGG*, the Supreme Court defined the nature of the vast and awesome powers of the PCGG, delimited its scope, and determined the instances justifying PCGG's exercise of these powers.

A. BASECO V. PCGG

1. THE FACTUAL BACKDROP

In *Bataan Shipyard & Engineering Co. Inc. (BASECO) v. PCGG, et. al.*[58], BASECO challenged the constitutionality of Executive Order Numbers 1 and 2, dated 28 February 1986 and 12 March 1986, respectively. The firm likewise prayed for the annulment of the orders of sequestration and takeover

[54] Presidential Decree 1468, at Sec. 9.

[55] *Id.* at Sec. 10.

[56] PCGG/COCOBANK Pamphlet, *supra* note 15, at 11.

[57] *Id.* at 12.

[58] 150 SCRA 181, 199 (1987).

which were issued and implemented by the PCGG.

BASECO assailed as unconstitutional the Executive Orders on the following grounds: first, the Executive Orders authorized the PCGG to take over its business without the benefit of hearing; second, that PCGG was acting both as prosecutor and judge in the same case; third, that the assailed Executive Orders do not provide for any proceeding, process, or remedy by which the sequestered corporation may challenge the validity of sequestration; and last, that the Executive Orders are bills of attainder.

BASECO also charged PCGG with interference in its business affairs when the government watchdog exercised several acts of dominion and management: by terminating the key officers of the corporation; by allowing its agents to either enter into or close contracts for the company; by appointing other persons to operate and manage some of the sequestered firm's assets and properties; and by planning to elect its own nominees into BASECO's board of directors.

The Supreme Court dismissed BASECO's petition for certiorari and prohibition and declared that the assailed executive orders were valid measures in "effecting the mandate of the people to recover ill-gotten wealth amassed by the previous regime."[59]

2. THE DOCTRINE OF *BASECO*

The Supreme Court, in settling the *BASECO* case, ruled that in order to assist the President in recovering ill-gotten wealth, the PCGG is empowered to issue writs of sequestration and freeze orders, as well as to implement the "provisional takeover of businesses which were taken over by the government of the Marcos Administration or by entities and persons close to him."[60] The powers to sequester and to takeover were differentiated thus:

> [In] providing for the remedy of "provisional takeover," the law acknowledges the apparent distinction between "ill-gotten business enterprises and entities" (going concerns business in actual operations), generally, *as to which remedy of sequestration applies, it being inferred that the remedy entails no interference, or at least possible interference with the actual management and operations thereof*; and business enterprises which were taken over by the government of the Marcos administration, or by entities or persons close to him; in particular, as to which a "provisional takeover" is

[59] *Id.*

[60] *Id.* at 208-210.

> authorized...Such *a "provisional takeover" imports something more than sequestration or freezing...In a "provisional takeover," what is taken into custody is not only the physical assets of the business enterprise or entity, but the business operation as well.* It is...the assumption of control not only over things, but over operations of on-going activities.[61](italics supplied)

The Supreme Court classified sequestration, freezing of assets, and provisional takeover as measures which were provisional and temporary in nature. Furthermore, these measures were to be resorted to for the particular purpose of preventing the disappearance of the assets and preserving the same until the issue of ownership of these assets shall have been determined in a proper judicial proceeding.

The Supreme Court explained that owing to their transitory character, these PCGG remedies are "not meant to deprive the owner or possessor of his title or any right to the property sequestered, frozen, or taken over and vest it in the sequestering agency, the government or other person. This can be done only for the causes and by the processes laid down by law."[62] In addition, the PCGG also clarified the powers of the Commission: the PCGG is a conservator, not an owner, which acts much like a court-appointed receiver and whose powers, even under the extreme situation of a takeover, are limited. The categorical pronouncements of the Supreme Court, through Associate Justice Andres Narvasa, are well worth quoting extensively:

> a. PCGG May Not Exercise Acts of Ownership
>
> ...The PCGG cannot exercise acts of dominion over property sequestered, frozen, or provisionally taken over...In relation to the property sequestered, frozen, or provisionally taken over, the *PCGG is a conservator not an owner.* (Emphasis by the Court) Therefore, it cannot perform acts of ownership; and this is specially true in the situations contemplated by the sequestration rules where, unlike cases of receivership, for example, no court exercises effective supervision or can upon due application and hearing, grant authority for the performance of acts of dominion.
> ...The resort to the provisional remedies...should

[61] *Id.* at 210.

[62] *Id.* at 211.

entail the least possible interference with business operations or activities so that, in the event that the accusation of the business enterprise being "ill-gotten" be not proven, it may be returned to its rightful owner as far as possible in the same condition as it was at the time of sequestration.

b. PCGG Has Only Powers of Administration

The PCGG may thus exercise only powers of administration over the property or business sequestered or provisionally taken over much like a court-appointed receiver, such as to defend actions in its own name; receive rents; collect debts due; pay outstanding debts; and generally do such other acts as may be necessary to fulfill its mission as conservator and administrator. In this context, it may, in addition, enjoin threatened commission of acts by any person or entity that may render moot and academic or frustrate or otherwise make ineffectual its efforts to carry out its task...*In the case of sequestered businesses* (i.e., going concerns, businesses in current operation), *as in the case of sequestered objects, its essential role...is that of a conservator, caretaker, "watchdog," or overseer. It is not that of manager or innovator, much less an owner.* (Emphasis supplied)

c. Powers over Business Enterprises Taken Over by Marcos or Entities Close to Him; Limitations thereon

Now, in the special instance of a business enterprise shown by evidence to have been "taken over by the government of the Marcos Administration..." the PCGG is given the power and authority..."to provisionally take (it) over in the public interest or to prevent** (its) disposal or dissipation...[S]omething more than physical custody is connoted; the PCGG may in this case exercise some measure of control in the operation, running, or management of the business itself. But even in this special situation, the intrusion into management should be restricted to the minimum degree necessary to accomplish the legislative will,

which is "to prevent the disposal or dissipation of the business enterprise." There should be no hasty, indiscriminate, unreasoned replacement or substitution of management officials or change of policies particularly in respect to viable establishments.[63]

In disposing of the issue of PCGG's exercise of the right to vote sequestered shares of stock, as authorized by President Aquino's 26 June 1986 Memorandum to PCGG, the Supreme Court laid down the parameters for the valid exercise of this special act.

d. Voting of Sequestered Stock

So, too, it is within the parameters of these conditions and circumstances [those cited under "a," "b," and "c" above] that the PCGG may properly vote sequestered stock of corporations...The Memorandum should be construed in such a manner as to be consistent with, and not contradictory of, the Executive Orders earlier promulgated on the same matter. There should be no exercise of the right to vote simply because the right exists or because the stocks sequestered constitute the controlling or substantial part of the corporate voting power. *The stock is not to be voted to replace directors, or revise articles or by-laws, or otherwise bring about substantial changes in policy, program, or practice of the corporation, except for demonstrably weighty and defensible grounds, and always in the context of the stated purposes of sequestration, i.e., to prevent the dispersion or undue disposal of corporate assets.* Directors are not to be voted out simply because the power to do so exists. Substitution of directors is not to be done without reason or rhyme, should indeed be shunned if at all possible, and undertaken only when essential to prevent the disappearance or wastage of corporate property, and always under such circumstances as assure that the replacements are truly possessed of

[63] *Id.* at 236-237.

competence, experience, and probity.[64](Emphasis supplied)

3.THE CONCURRING OPINIONS

a. Associate Justice Teodoro Padilla

Associate Justice Padilla concurred with the majority and, in his opinion, wrote that the "removal and election of members of the board of directors of a corporate enterprise is a clear act of ownership on the part of the shareholders of the corporation."[65] His Honor states that under normal circumstances, he would deny PCGG the authority to vote the sequestered stock, except that, in the *BASECO* case, the records showed that certificates evidencing 95% of the total ownership in the capital stock were found in Malacañang indorsed in blank.

b. Associate Justice Ameurfina Melencio-Herrera

Associate Justice Melencio-Herrera qualifies her vote with respect to the exercise by PCGG of the right to vote the sequestered shares. Her Honor is likewise of the opinion that voting sequestered stock is an exercise of the right of ownership which goes beyond the purpose of a writ of sequestration. Justice Herrera frames her concurrence on the issue of voting sequestered stock in this wise:

> I have no objection to according the right to vote sequestered stock in case of a takeover of business actually belonging to the government and 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 on-going 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...[66]

[64] *Id.* at 238-239.

[65] *Id.* at 252 (concurring opinion of Padilla, J.).

[66] *Id.* at 253 (concurring opinion of Melencio-Herrera, J.)

c. Associate Justice Hugo Gutierrez

Associate Justice Gutierrez, in his concurring and dissenting opinion, disapproves of PCGG's authority and its consequent exercise of the right to vote sequestered shares. He maintains that the revamp of the board of directors (in the *BASECO* case, eight out of eleven members) may not be treated as acts of conservation or preservation of assets and considers the powers of sequestration broad enough to protect sequestered assets. His Honor likewise views PCGG's act of voting of sequestered shares as an act of ownership. He writes:

> The election of the members of a board of directors is distinctly and unqualifiedly an act of ownership. When stockholders of a corporation elect or remove members of a board of directors, they exercise their right of ownership in the company they own. By no stretch of the imagination can the revamp of the board of directors be considered as a mere act of conserving the assets or preventing the dissipation of sequestered assets. The broad powers of a sequestrator are more than enough to protect sequestered assets. There is no need and no legal basis to reach out further and exercise ultimate acts of ownership.
>
> Under the powers which PCGG has assumed and wields, it can amend the articles and by-laws of a sequestered corporation, decrease the capital stock or sell substantially all corporate assets without any effective check from the owners not yet divested of their titles or a court of justice.[67]

4. THE LONE DISSENT: ASSOCIATE JUSTICE ISAGANI CRUZ

Associate Justice Isagani Cruz, in his dissenting opinion, espouses a similar view on the issue of the power of PCGG to vote sequestered stock as the other Justices cited above. His Honor writes:

> I am convinced and so submit that the PCGG cannot at this time

[67] *Id.* at 257-258 (concurring opinion of Gutierrez, J.).

take over and exercise thereover acts of ownership without court supervision. Voting the shares is an act of ownership. Reorganizing the board of directors is an act of ownership. Such acts are clearly unauthorized. As the majority opinion itself stresses, the PCGG is merely an administrator whose authority is limited to preventing the sequestered properties from being dissipated or clandestinely transferred.[68]

5. THE IMPORT OF *BASECO*

Much importance is accorded the pronouncements of the Supreme Court in *BASECO*, and with reason. This case delineates the framework and the parameters under which PCGG must operate and exercise the not inconsiderable powers vested upon it in the task of recovering ill-gotten wealth. *BASECO* defines the boundaries beyond which PCGG may not trespass.

The Supreme Court, in no uncertain terms, essays the scope and extent of the powers of PCGG as they affect sequestered properties and, consequently, the rights of the owners. What appears to recur in this disquisition is that sequestration does not divest the owner of his title over the sequestered properties. In addition, sequestration is a provisional remedy, temporary or transitory in duration and contingent upon a *prima facie* determination that the assets reached by the writs are indeed ill-gotten and their seizure justified by the dictates of public interest. Specifically, there must be a need to preserve the assets until final adjudication as to their ownership and the manner by which these sequestered properties were acquired.

Other cases on sequestration decided by the Supreme Court reiterate *BASECO*.

B. Palm Avenue Realty Development Corp. v. PCGG

In *Palm Avenue Realty Development Corporation v. PCGG*,[69] the Supreme Court dismissed the petition for certiorari filed by the petitioner firm, finding that PCGG did not commit grave abuse of discretion when it allowed Benguet Management Corporation to reacquire its common shares, which, at that time, was owned by Palm Avenue Realty and pledged to several financial institutions. PCGG acted consistently with its duty to properly administer and conserve the assets represented by the sequestered shares of

[68] *Id.* at 259 (dissenting opinion of Cruz, J.).

[69] 153 SCRA 579 (1987).

Benguet and owned by Palm Avenue Realty. The sale to Benguet effected the release of the pledges. The 6.5 million shares repurchased by Benguet were warehoused and held in trust for PCGG, while the remaining balance of 6.7 million shares were held in *custodia legis* by the PCGG. Of the 16,237,339 shares released, 3 million shares were sold by Benguet to its employees under the company's stock dispersal and incentive plan.[70]

C. COCOFED v. PCGG

In the *COCOFED* case,[71] the Supreme Court upheld the validity of the sequestration orders by citing *BASECO*, repeating that "sequestration is not confiscatory but rather preservative in character."[72]

D. Liwayway Publication Inc. v. PCGG
Bulletin Publishing Corp. v. PCGG

In the jointly resolved cases of *Liwayway Publication Inc. v. PCGG* and *Bulletin Publishing Corp. (BULLETIN) v. PCGG, et. al.*[73], the PCGG was ordered by the Supreme Court to accept the cash deposit offered by BULLETIN for the release of its sequestered shares which were owned by Messrs. Cesar Zalamea and Eduardo Cojuangco, Jr. Together, these gentlemen owned a minority of the stocks in BULLETIN, and the latter offered to make a cash deposit equivalent to about 29 million to PCGG, which offer the PCGG refused. The Supreme Court considered the offer similar to a cash bond and found that the offer sufficiently protects the interests of the government.

It must be noted that another issue was not resolved in the case, because it was rendered moot and academic: the PCGG's right to vote stocks in the BULLETIN. PCGG then was determined to exercise the right to vote the minority stock it sequestered in BULLETIN. This precipitated the filing of the petition seeking the nullification of PCGG's 14 April 1987 order which

[70] *Id.* at 585.

[71] *Supra* note 18.

[72] *Id.* at 16.

[73] 160 SCRA 716 (1988)

declared its intention to vote the shares.[74] Subsequently, PCGG backtracked. In its January 1988 Memorandum, the PCGG stated that it no longer intended to exercise its right to vote sequestered stocks and that its present role is confined largely to monitoring "Bulletin's activities in terms of preventing the dissipation and disposition of funds and assets..."[75] The Supreme Court received PCGG's manifestation with approbation and declared that the constitutional guarantee of freedom of the press includes the guarantee that "publishers may manage their affairs independently, free from any shadow of government participation and intervention."[76]

IV. The Cocobank Case: Exceeding The Limits Of Baseco

In view of the doctrine laid down by *BASECO* and reiterated in subsequent cases, should PCGG retain the prerogative to exercise the right to vote sequestered stock? It is submitted that the response should be in the negative.

No one can seriously contest the validity of the following propositions: that the recovery of ill-gotten wealth is and should be a legitimate concern of the government; that public interest shall be served by its restitution; and that there is an urgency for the expeditious recovery of these assets and properties. For these ends, the PCGG was created and was armed with extra-ordinary powers in order to effectuate the mandate entrusted to it by the Filipino people. The bone of contention, however, is not the validity of the grant of such awesome powers to the PCGG. Rather, it is the manner with which the PCGG exercises its powers, particularly, its marked departure from the confines imposed by the law when it votes sequestered stocks under conditions contemplated neither by Executive Order 1, 2, 14, and 14a, nor by jurisprudence on the matter.

A. Shares as Property

1. THE CIVIL CODE: SHARES AS PERSONAL PROPERTY

[74] *Id.*

[75] *Id.*

[76] *Id.*

Substantive law, particularly Art. 417 of the Civil Code, recognizes shares of stock as personal property over which rights of ownership may, within limits, validly be exercised. It is likewise well-recognized that dominion comprehends a bundle of rights: the power to enjoy, the power to dispose, the power to recover and vindicate, and the power to exclude.[77] Thus, an owner may rightfully alienate, encumber, transform, or destroy his property;[78] an owner may recover property unlawfully taken from him through legal remedies such as suits for replevin, forcible entry, detainer, and accion publiciana; an owner may exclude others from the use of his property through actions to quiet title. Owners exercise these same rights over shares of stock with variations peculiar to the nature of the property.

2. THE CONSTITUTION: PROTECTION OF PROPERTY RIGHTS

Our Constitution zealously guards property rights and guarantees that a person shall not be deprived of property without due process of law. Before ownership and other property rights can be restricted, a substantive and a procedural standard must first be met: the substantive requisite that intrusion must be justified by the dictates of public interest; and the procedural requirement that the measures employed must be reasonably necessary to achieve its purpose and not unduly oppressive upon individuals. Over the years, the Supreme Court has consistently upheld these postulates in many cases. The cases of sequestration are not exempt from the scope of these long-established rules.

3. RIGHTS PRESCINDING FROM OWNERSHIP OF SHARES OF STOCK

Apart from the property rights granted to owners by the Civil Code in general and the protection guaranteed by the Constitution, stockholders are accorded by the Corporation Code certain other rights by virtue of their ownership of shares in a corporation. Corporate Law commentators have capsulized these rights into three: the right to control and management; the right to profits and surplus; and the right to corporate assets upon liquidation

[77] 2 J.B.L. Reyes and R. Puno, Outline of Philippine Civil Law at 2 (1967).

[78] *Id.*

or dissolution of the business.[79] These rights are viewed as essential to stockholder participation in corporate affairs. The right to control and management is effectuated only in one way: by voting the shares.

a. Under the Corporation Code

By voting his share of stock, a stockholder participates in the myriad activities of the corporation. To illustrate, stockholder consent or ratification is needed in these instances: the formulation and adoption of by-laws,[80] the election of directors,[81] the declaration of dividends,[82] the extension or reduction of the corporate term,[83] the approval of the increase in capital stock or in bonded indebtedness,[84] the ratification of sales, leases, exchanges, encumberances covering all or substantially all of a corporation's assets,[85] the liquidation and dissolution of business,[86] among a host of other activities. In short, a stockholder, through his share of stock, intervenes throughout the lifetime of a corporation: from its inception, via the adoption of the corporation's internal rules and regulations, to its demise, via dissolution and liquidation. Moreover, Fletcher writes: "the right to vote is an incident to membership or of the property in the stock. The stockholder may not be deprived of his right to vote without his consent. And he may vote as he chooses."[87]

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[79] 3 A. AGBAYANI, COMMERCIAL LAWS OF THE PHILIPPINES: COMMENTARIES AND JURISPRUDENCE, at 94 (1988).

[80] CORPORATION CODE OF THE PHILIPPINES, B.P. Blg. 86, Sec. 46 (1980).

[81] *Id.* at Sec.23.

[82] *Id.*, at Sec. 43.

[83] *Id.*, at Sec. 37.

[84] *Id.*, at Sec. 38.

[85] *Id.*, at Sec. 40.

[86] *Id.*, at Sec. 118, 119, and 120.

[87] 5 W. FLETCHER, CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS, cited in 3 A. AGBAYANI, *supra* note 79, at 524.

b. Rights Peculiar to COCOBANK Shares

Further to the rights granted by the Civil Code and the Corporation Code to owners of shares of stock, the corporation may confer upon these owners other rights by adding to their shares special features in the articles of incorporation. This situation is true of the COCOBANK shares.

In a special stockholders' meeting held on 7 April 1983, the stockholders of COCOBANK amended its Articles of Incorporation and By Laws to effect, among other things, the increase of the corporation's capital stock to P 3.25 billion, divided into 2.5 billion common shares and 750 million preferred shares, both classes of shares with a par value of P 1.00.[88] Most significant among the features of COCOBANK shares that were introduced via the Amended Articles and Amended By Laws was the ceiling imposed on ownership of shares and second, the provisions for profit sharing among the officers of COCOBANK.

Article NINTH[89] of the Amended Articles establishes a maximum limit on ownership: no person or entity, for his benefit shall own more than 1% of the outstanding capital stock. Any transfer which exceeds the 1% ceiling will neither be recognized nor registered in the stock books. The restriction, however, does not apply to stockholders of record as of 31 December 1979, the cut off date. Not only may these stockholders continue to own shares in excess of the 1% limit, they may likewise freely transfer or dispose of these shares, notwithstanding the fact that the transferee will own more than 1%.

Also, the Amended By-Laws allowed the grant of additional compensation to COCOBANK's officers and directors in terms of bonuses drawn from 5% of both the net profit and net earnings of the Bank, after deducting income taxes. Of the 5% of both net profits and net earnings, 1% was reserved for the President and 4% distributed among the remaining officers.[90]

B. Limits On The Rights Of Ownership

Is the exercise of the right to vote an incident of ownership? It is. May

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[88] Amended Articles of Incorporation and Amended By-Laws of COCOBANK, Art. SEVENTH (1983, 1986).

[89] Amended Articles of Incorporation of COCOBANK, Article NINTH (1983).

[90] Amended By-Laws of COCOBANK, Art. IX, Sec.1 (July 26, 1986).

the enjoyment of such right be withheld? Yes, in particular circumstances and for valid reasons.

1. LIMITS ON PROPERTY IN GENERAL

Law and jurisprudence have allowed the government to interfere with property rights in the exercise of police power, power of taxation, and power of eminent domain, provided, of course, that the Constitutional requisites for the exercise of these powers be fulfilled.

Property rights may also be subordinated to the concerns of human rights and civil liberties. In *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Company, Inc*, the Supreme Court laid down the rule that the impairment of property rights, on the one hand, may be allowed upon a showing that there is a reasonable relationship between the means employed and the object of the law, but interference with civil liberties, on the other hand, requires the more stringent requisite of the existence of a grave and imminent peril of a substantive evil that ought to be prevented.[91]

Likewise, property is subject to easements and servitudes. Furthermore, an owner, in the utilization of his property, must take care not to injure the rights of others. An owner, for example, may not assert his superior right to exclude another person from intruding into his property if the latter's intrusion is necessary to avert an imminent danger. In such a case, the owner's relief is to receive compensation for damages.

All in all, the basic limitation on the enjoyment of the property rights in general is that it must not run afoul with the rights of others and that it may be subserved to the higher needs of public interest.

2. LIMITS ON VOTING RIGHTS ON SHARES

A stockholder's property rights over his shares may likewise be limited. His voting rights on his shares may be denied in instances when his shares are declared delinquent, or when he subscribes to non-voting stocks.

Apart from the cases provided by the Corporation Code as well as those found in the corporation's own articles and by-laws, there are special situations when a stockholder may find that by a confluence of circumstances, he may not vote, or even if he votes, a third party may validly countermand or substitute the stockholder's choice. These instances are demonstrated by the provisions of the General Banking Act and the Central Bank Act- which naturally are applicable only to banking corporations- and, in recent

[91] 50 SCRA 189, 202-203 (1973).

experience, by sequestration.

a. Qualifications of Bank Directors

While stockholders may elect the directors to the board of a banking corporation, their choices may be passed upon, reviewed, and even disqualified when they are found to be unfit by the Monetary Board, pursuant to a grant of power under the General Banking Act.

b. Conservatorship, Receivership, and Liquidation

Also, Sec. 28-A and 29 of the Central Bank Act empower the Monetary Board to place the bank under conservatorship, receivership, or liquidation. In these scenarios, the stockholder's right of participation *vis-a-vis* the control and management of the business is suspended. Conservators, receivers, and liquidators are generally given the power to assume management of the bank, administering all its assets and liabilities.

There are, however, some differences. A conservator, who must not be connected with the Central Bank, is appointed by the Monetary Board when a bank is "in state of continuing inability or unwillingness to maintain a condition of liquidity and solvency deemed adequate to protect the interests of depositors and creditors."[92] A receiver, who may be a Central Bank official or any other person of recognized competence, is designated when a bank is nearing insolvency or when a bank is liable to cause probable loss to its depositors or creditors if allowed to continue in business.[93] A liquidator is appointed by the regional trial court whose assistance in the liquidation of the bank has been sought by petition through the Solicitor General. A liquidator, who exercises his powers and functions under court supervision, may effect payments to creditors from the assets of the bank.[94] All in all, curtailing the stockholder's right to participate by placing a bank under conservatorship, receivership, or liquidation is an extra-ordinary measure designed to protect the public and the economy from the damage that may be wrought by a bank in financial distress.

[92] CENTRAL BANK ACT, Republic Act 265, as amended by Presidential Decree 1937, Sec. 28-A (1948).

[93] *Id.*, at Sec. 29

[94] *Id.*

c. Sequestration

The sequestration of shares is one other instance when stockholders may be denied the right to vote their stock. An analysis of the *BASECO* case leads to the conclusion that the Supreme Court views the PCGG's prerogative to exercise the right to vote sequestered stock as an exercise of police power. The Supreme Court, however, also established the conditions for the valid exercise of this special example of police power. Two requisites must be fulfilled: first, that the act be done to protect public interest; and second, that the means employed to achieve the objective be not unduly oppressive to individuals.

The public interest or public welfare criterion with respect to sequestered stock is placed in the context of PCGG's purpose; thus, the act of voting must be used to prevent the dissipation, disappearance, conversion, and disposition of assets alleged to be ill-gotten and to preserve them until final adjudication of ownership.

The criterion as to the reasonableness of the measures employed has been interpreted by *BASECO* to mean that the PCGG should not exercise the right to vote sequestered stock simply because the right exists. That the sequestered shares constitute the controlling block does not give PCGG the right, without rhyme or reason, to replace directors, revise the corporation's articles and by-laws, or initiate and implement substantial changes in policy, program, or practice. The PCGG may only exercise the right to vote the shares on serious grounds described by the Supreme Court as "demonstrably defensible."[95]

BASECO settles the issue regarding the nature of sequestration, freeze orders, and provisional takeovers: they are not confiscatory. Title remains with the owner of the sequestered assets; PCGG functions merely as conservator, receiver, and administrator over these properties. Even in the case of a provisional takeover, when conditions warrant the PCGG's exercise of some measure of control in the management of business, the PCGG's intrusion still ought to be kept to a minimum and must be done in the context of the PCGG's duty to prevent the disposal or dissipation of the enterprise. For sequestered businesses, particularly those classified as on-going concerns or businesses in current operation, the PCGG functions merely as "conservator, watchdog, overseer [and] not as manager, innovator, much less an owner."[96]

[95] *BASECO*, *supra* note 58, at 199.

[96] *Id.*

C. The COCOBANK Contradiction

While it is true that the coconut farmers retain ownership over their shares in COCOBANK, their rights to ownership have virtually been suspended because of the practical impact of sequestration.

The coconut farmers' rights to possession, the right to use, and the right to the fruits as shareholders, perforce, must await final judgment of the case. The right to encumber, to alienate, or to transfer are enjoined under the sequestration order. While the coconut farmers have exercised the right to vindicate their property, their efforts have yielded no results after four long years. And now, even the right to vote their shares is denied them.

One may concede the necessity for PCGG, back in 1986, to vote the sequestered shares in order to install a full fifteen-man board and to allow free, unhampered, and expeditious examination of COCOBANK's books, including the scrutiny of the composition of its shareholders. But to allow the PCGG to continue voting the sequestered shares to this date is to stray from the parameters set by *BASECO* and the requirements imposed by the law.

Consider the following facts and arguments:

1. PCGG has voted even validated shares of the coconut farmers.

PCGG launched a revalidation project to ascertain the coconut farmers' ownership of COCOBANK'S common stocks. The joint UCPB/PCA/PCGG validation report, dated 25 May 1988 and submitted to the COCOBANK Board of Directors, stated that some 600,000 farmers personally appeared before the validation committees nation-wide to present their stock certificates for validation. These validated shares, numbering some 300M, comprise some 322% of the outstanding stock for validation. Yet, *these PCGG-validated shares themselves remain sequestered.* Worse, in the 5 March 1991 annual stockholders' meeting of COCOBANK, PCGG voted these shares for agenda items, other than the election of directors as the latter was restrained by the Supreme Court. But PCGG still used the sequestered shares to establish a quorum.

2. Even without a provisional takeover order, the PCGG has *de facto* taken over COCOBANK and other enterprises owned by the coconut farmers.

Neither COCOBANK nor the business enterprises organized and owned by the coconut farmers have ever been sequestered. Still, PCGG has virtual control over the management and operations of COCOBANK and its affiliates, because PCGG sequestered 94.4% of its outstanding capital stock and continues to exercise the voting rights attached to these shares. Without

issuing an actual provisional takeover order, the PCGG retains management and control over the COCOBANK group and has, in fact, taken over these business through the simple expediency of voting the shares.

3. Coconut levy funds are not public funds, but privately-owned funds impressed with public interest.

Madame Justice Herrera, in her concurring opinion in *BASECO,* expresses no objection to PCGG' voting of sequestered stocks in businesses taken over when these businesses actually belong to the government or were capitalized by public funds.

In the *COCOFED* decision promulgated on 2 October 1989, the Supreme court rejected, albeit *sub silencio*, the government's proposition that coconut levies are public funds. Instead, the Supreme Court ruled that coconut levy funds are impressed with public interest, considering their nature and their manner of collection. Additionally, the Supreme Court allowed the coconut farmers to demonstrate satisfactorily that the funds have become legitimately private. The government did not appeal this decision; it has now become *res judicata*. Yet again, the PCGG insists on voting the sequestered shares owned by the coconut farmers upon the same theory that the shares were purchased with public money. The public fund theory, as used by the PCGG to maintain the validity of their continued exercise of the prerogative to vote sequestered shares, is indefensible under case law on the matter.

4. By amending COCOBANK's by-laws, the PCGG has made it possible for itself to directly manage, operate, and control COCOBANK.

On 29 July 1986, the PCGG amended COCOBANK's by-laws[97] on the basis of the delegated authority granted to it by the stockholders on 30 June 1986. On its face, the move seemed harmless enough, but the sequence of events reveals otherwise.

Using the voting power represented by the sequestered shares, which comprised 94.4% of the voting stock, the PCGG first elected the board of directors. Second, and still using the shares sequestered and acting in behalf of the stockholders, the PCGG delegated to the board of directors that it installed the authority to amend the by-laws. The Board, so empowered, proceeded to amend the by-laws and re-organized the set-up of the officers of the bank, making the Chairman also the Chief Executive Officer (CEO). The re-organization of COCOBANK's officers appears ordinary enough at

[97] Amended By-Laws, *supra* note 90.

first glance, until one examines the powers granted to the Chairman/CEO.

The Chairman/CEO shall be responsible for the general supervision, management, and administration of the business of the bank. To facilitate his functions, the Chairman/CEO was given the following powers.

> "(a) To initiate and develop corporate objectives and policies for the approval of the Board of Directors;
>
> (b) To formulate long range projects, plans, and programs;
>
> (c) To establish general administrative and operating policies;
> X X X "[98]

BASECO stresses two main ideas: first, that voting sequestered shares is a prerogative to be used only sparingly; and second, that PCGG is neither a manager nor an innovator. PCGG can be likened to an administrator or a court-appointed receiver.

An examination of the revised powers granted to the COCOBANK's Chairman/CEO by the amendments, however, indicates that the PCGG had more in mind than just the preservation or conservation of the sequestered assets, or the prevention of their concealment, dissipation, or disappearance. The amended by-laws have allowed PCGG or its representatives to *directly manage and control COCOBANK* by making it possible for them to set policies and objectives and to formulate long-range programs and projects. These are not mere acts of administration or measures to prevent the dissipation of assets. They exceed the limits defined in *BASECO*. Moreover, this apparent intention to "call the shots" in COCOBANK is not even supported by the *a priori* requirement for the issuance of a provisional takeover order or a sequestration order over the corporation itself.

5. PCGG's continued exercise of its prerogative to vote sequestered shares is no longer warranted by the circumstances.

[98] *Id.*, at Sec. 1 & 3, at 9-10.

One may concede that PCGG'S vesting of powers unto itself by using sequestered shares in 1986 was dictated by necessity. But the PCGG's continued use of the voting power of the sequestered shares, even up to 5 March 1991, in order to ratify acts of a board, which it installed, is an exercise of PCGG prerogative that may be characterized as one "without rhyme or reason, done simply because the right to vote the shares exists and because the sequestered shares represent the controlling blocks."[99] For five years, the farmer/stockholders have consistently been barred from voting their shares. Indeed, the means employed by the government, through PCGG, to achieve its ends has become truly oppressive to individuals.

CONCLUSION
THE DILEMMA: ENDS VERSUS MEANS

Not a few people view the case of the coconut farmers with some skepticism, if not, even cynicism. These sectors maintain that the ownership of the coconut farmers of assets, businesses, and properties valued in the billions is but a sophisticated and complex scheme that has allowed a selected few to control the coconut industry. Likewise, not a few people believe that the coconut farmers' attempts to exercise their right to vote their shares are vain, empty, and useless posturings. One need only consider that even if the farmers own 51.8% of COCOBANK's outstanding capital stock, the wide dispersal of the shares to about a million of them makes it almost impossible for them to become an effective controlling block.

Be that as it may, the fact is that these farmers are the registered owners of record of fully issued COCOBANK shares. As owners, they should, despite sequestration and absent any serious and valid grounds, be allowed to vote their shares. In the corporate milieu, the most direct, recurring, regular, and consistent opportunity for stockholders to influence the conduct of a corporation's business arises when they elect the persons to constitute the board of directors.

PCGG justifies its direct control over the COCOBANK group's management and operations by pointing to its successful and profitable steering of the business through a board of directors that it has elected entirely. This, unfortunately, begs the issue on the propriety of allowing

[99] *BASECO*, *supra* note 58 at 238-239.

PCGG to continue to vote sequestered shares. It also violates the rules laid down in *BASECO* that the prerogative, if at all exercised, be done sparingly. That the directors installed by PCGG may be better qualified or may manage the business better is neither an excuse nor a justification to deprive the shareholders of their right to choose their own directors. Only in the event that the mere act of voting in itself should result in the dissipation, disappearance, wastage, or concealment of sequestered assets can the PCGG intervene. But then and only then.

PCGG's reluctance to allow the shareholders to elect their directors rests on an apprehension that the persons chosen might, as a board, undertake acts that will result in the frittering away of the sequestered assets. But this is undoubtedly anticipatory. Besides, the PCGG is not entirely left without recourse. It may apply for the appropriate writs to enjoin, restrain, or prohibit acts of the board of directors which are designed to defeat the purposes of sequestration. Under the empowering laws, PCGG, *motu propio*, can restrain any person who shall directly or indirectly cause the dissipation of the alleged ill-gotten properties. Still availing of its powers as administrators to ensure the conservation of the assets, the PCGG can validly review board actions. Also, fiscal agents, comptrollers, and asset monitors may be appointed to monitor the business. And in extreme cases, the PCGG may lay claim to the special powers granted to a conservator under Sec. 28-A of the Central Bank Act which includes the direct management and operations of the business, as well as the power to override previous acts of management. Of course, the several recourse available to PCGG, if exercised by it, should always be done within the context of preserving the assets, preventing their loss, dissipation, or disappearance. Likewise, the exercise must be to the extent necessary and never for an interminable period.

There is a final point.

The cases involving ill-gotten wealth are presently pending before the Sandiganbayan. Included in PCGG's mandate is the duty to assist in the prosecution of these cases. The task is one of quite considerable proportions and merits the PCGG's efforts as well as serious and concerted action. The direct and active control and management of sequestered businesses, which sometimes appear under the guise of administration in order to preserve assets and properties, should be subordinated to the all-important imperative

of recovering ill-gotten wealth. The court requires assistance to arrive at a final determination of the issue of ownership as expeditiously as possible. Not only will the owners benefit. So, too, will Government. And justice is thereby served.

THE SUPREME COURT AND JUDICIAL POLICY-MAKING

ADRIAN S. CRISTOBAL, JR.*

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