



**Republic of the Philippines
Supreme Court
Baguio City**

SECOND DIVISION

LAND BANK OF THE PHILIPPINES, **G.R. No. 191667**

Petitioner,

Present:

- versus -

CARPIO, *J.*, Chairperson,
BRION,
DEL CASTILLO,
PEREZ, *and*
PERLAS-BERNABE, *JJ.*

EDUARDO M. CACAYURAN,
Respondent.

Promulgated:

APR 17 2013 *HA Macabales Perfecto*

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DECISION

PERLAS-BERNABE, J.:

Assailed in this Petition for Review on *Certiorari*¹ is the March 26, 2010 Decision² of the Court of Appeals (CA) in CA-G.R. CV. No. 89732 which affirmed with modification the April 10, 2007 Decision³ of the Regional Trial Court (RTC) of Agoo, La Union, Branch 31, declaring *inter alia* the nullity of the loan agreements entered into by petitioner Land Bank of the Philippines (Land Bank) and the Municipality of Agoo, La Union (Municipality).

¹ *Rollo*, pp. 10-37.

² *Id.* at 42-73. Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Ramon R. Garcia and Stephen C. Cruz, concurring.

³ *Id.* at 74-203. Penned by Executive Judge Clifton U. Ganay.

The Facts

From 2005 to 2006, the Municipality's *Sangguniang Bayan* (SB) passed certain resolutions to implement a multi-phased plan (Redevelopment Plan) to redevelop the Agoo Public Plaza (Agoo Plaza) where the Imelda Garden and Jose Rizal Monument were situated.

To finance phase 1 of the said plan, the SB initially passed Resolution No. 68-2005⁴ on April 19, 2005, authorizing then Mayor Eufranio Eriguel (Mayor Eriguel) to obtain a loan from Land Bank and incidental thereto, mortgage a 2,323.75 square meter lot situated at the southeastern portion of the Agoo Plaza (Plaza Lot) as collateral. To serve as additional security, it further authorized the assignment of a portion of its internal revenue allotment (IRA) and the monthly income from the proposed project in favor of Land Bank.⁵ The foregoing terms were confirmed, approved and ratified on October 4, 2005 through Resolution No. 139-2005.⁶ Consequently, on November 21, 2005, Land Bank extended a ₱4,000,000.00 loan in favor of the Municipality (First Loan),⁷ the proceeds of which were used to construct ten (10) kiosks at the northern and southern portions of the Imelda Garden. After completion, these kiosks were rented out.⁸

On March 7, 2006, the SB passed Resolution No. 58-2006,⁹ approving the construction of a commercial center on the Plaza Lot as part of phase II of the Redevelopment Plan. To finance the project, Mayor Eriguel was again authorized to obtain a loan from Land Bank, posting as well the same securities as that of the First Loan. All previous representations and warranties of Mayor Eriguel related to the negotiation and obtention of the new loan¹⁰ were ratified on September 5, 2006 through Resolution No. 128-2006.¹¹ In consequence, Land Bank granted a second loan in favor of the Municipality on October 20, 2006 in the principal amount of ₱28,000,000.00 (Second Loan).¹²

Unlike phase 1 of the Redevelopment Plan, the construction of the commercial center at the Agoo Plaza was vehemently objected to by some residents of the Municipality. Led by respondent Eduardo Cacayuran (Cacayuran), these residents claimed that the conversion of the Agoo Plaza

⁴ Id. at 79-83.

⁵ Id. at 63.

⁶ Id. at 120-125.

⁷ Id. at 64.

⁸ Id. at 87-88.

⁹ Id. at 115-120. Records reveal that there are two (2) versions of Resolution No. 58-2006. While in both versions the SB approved the construction of the said commercial center, the second version further authorized Mayor Eriguel to negotiate and enter into a loan with Land Bank for the aforesaid purpose, as well as mortgage, assign, or execute any other collateral agreement to secure the payment of such loan.

¹⁰ Id. at 65.

¹¹ Id. at 125-127.

¹² Id. at 65.

into a commercial center, as funded by the proceeds from the First and Second Loans (Subject Loans), were “highly irregular, violative of the law, and detrimental to public interests, and will result to wanton desecration of the said historical and public park.”¹³ The foregoing was embodied in a Manifesto,¹⁴ launched through a signature campaign conducted by the residents and Cacayuran.

In addition, Cacayuran wrote a letter¹⁵ dated December 8, 2006 addressed to Mayor Eriguel, Vice Mayor Antonio Eslao (Vice Mayor Eslao), and the members of the SB namely, Violeta Laroya-Balbin, Jaime Boado, Jr., Rogelio De Vera, James Dy, Crisogono Colubong, Ricardo Fronda, Josephus Komiya, Erwina Eriguel, Felizardo Villanueva, and Gerard Mamuyac (Implicated Officers), expressing the growing public clamor against the conversion of the Agoo Plaza into a commercial center. He then requested the foregoing officers to furnish him certified copies of various documents related to the aforementioned conversion including, among others, the resolutions approving the Redevelopment Plan as well as the loan agreements for the sake of public information and transparency.

Unable to get any response, Cacayuran, invoking his right as a taxpayer, filed a Complaint¹⁶ against the Implicated Officers and Land Bank, assailing, among others, the validity of the Subject Loans on the ground that the Plaza Lot used as collateral thereof is property of public dominion and therefore, beyond the commerce of man.¹⁷

Upon denial of the Motion to Dismiss dated December 27, 2006,¹⁸ the Implicated Officers and Land Bank filed their respective Answers.

For its part, Land Bank claimed that it is not privy to the Implicated Officers’ acts of destroying the Agoo Plaza. It further asserted that Cacayuran did not have a cause of action against it since he was not privy to any of the Subject Loans.¹⁹

During the pendency of the proceedings, the construction of the commercial center was completed and the said structure later became known as the Agoo’s People Center (APC).

¹³ Id. at 213-215.

¹⁴ Id.

¹⁵ Id. at 216-218.

¹⁶ Id. at 205-212.

¹⁷ Id. at 208.

¹⁸ Id. at 49.

¹⁹ Id. at 53.

On May 8, 2007, the SB passed Municipal Ordinance No. 02-2007,²⁰ declaring the area where the APC stood as patrimonial property of the Municipality.

The Ruling of the RTC

In its Decision dated April 10, 2007,²¹ the RTC ruled in favor of Cacayuran, declaring the nullity of the Subject Loans.²² It found that the resolutions approving the said loans were passed in a highly irregular manner and thus, *ultra vires*; as such, the Municipality is not bound by the same.²³ Moreover, it found that the Plaza Lot is proscribed from collateralization given its nature as property for public use.²⁴

Aggrieved, Land Bank filed its Notice of Appeal on April 23, 2007.²⁵ On the other hand, the Implicated Officers' appeal was deemed abandoned and dismissed for their failure to file an appellants' brief despite due notice.²⁶ In this regard, only Land Bank's appeal was given due course by the CA.

Ruling of the CA

In its Decision dated March 26, 2010,²⁷ the CA affirmed with modification the RTC's ruling, excluding Vice Mayor Eslao from any personal liability arising from the Subject Loans.²⁸

It held, among others, that: (1) Cacayuran had *locus standi* to file his complaint, considering that (a) he was born, raised and a *bona fide* resident of the Municipality; and (b) the issue at hand involved public interest of transcendental importance;²⁹ (2) Resolution Nos. 68-2005, 139-2005, 58-2006, 128-2006 and all other related resolutions (Subject Resolutions) were invalidly passed due to the SB's non-compliance with certain sections of Republic Act No. 7160, otherwise known as the "Local Government Code of 1991" (LGC); (3) the Plaza Lot, which served as collateral for the Subject Loans, is property of public dominion and thus, cannot be appropriated either by the State or by private persons;³⁰ and (4) the Subject Loans are

²⁰ Id. at 219-220.

²¹ Id. at 74-203.

²² Id. at 199.

²³ Id. at 148-149.

²⁴ Id. at 145-147.

²⁵ Id. at 56.

²⁶ Id. at 45.

²⁷ Id. at 42-73.

²⁸ Id. at 69.

²⁹ Id. at 62-63.

³⁰ Id. at 67.

ultra vires because they were transacted without proper authority and their collateralization constituted improper disbursement of public funds.

Dissatisfied, Land Bank filed the instant petition.

Issues Before the Court

The following issues have been raised for the Court's resolution: (1) whether Cacayuran has standing to sue; (2) whether the Subject Resolutions were validly passed; and (3) whether the Subject Loans are *ultra vires*.

The Court's Ruling

The petition lacks merit.

A. *Cacayuran's standing to sue*

Land Bank claims that Cacayuran did not have any standing to contest the construction of the APC as it was funded through the proceeds coming from the Subject Loans and not from public funds. Besides, Cacayuran was not even a party to any of the Subject Loans and is thus, precluded from questioning the same.

The argument is untenable.

It is hornbook principle that a taxpayer is allowed to sue where there is a claim that public funds are illegally disbursed, or that public money is being deflected to any improper purpose, or that there is wastage of public funds through the enforcement of an invalid or unconstitutional law. A person suing as a taxpayer, however, must show that the act complained of directly involves the illegal disbursement of public funds derived from taxation. In other words, for a taxpayer's suit to prosper, two requisites must be met namely, (1) public funds derived from taxation are disbursed by a political subdivision or instrumentality and in doing so, a law is violated or some irregularity is committed; and (2) the petitioner is directly affected by the alleged act.³¹

³¹ *Mamba v. Lara*, G.R. No. 165109, December 14, 2009, 608 SCRA 149, 162, citing *Bagatsing v. San Juan*, 329 Phil. 8, 13 (1996).

Records reveal that the foregoing requisites are present in the instant case.

First, although the construction of the APC would be primarily sourced from the proceeds of the Subject Loans, which Land Bank insists are not taxpayer's money, there is no denying that public funds derived from taxation are bound to be expended as the Municipality assigned a portion of its IRA as a security for the foregoing loans. Needless to state, the Municipality's IRA, which serves as the local government unit's just share in the national taxes,³² is in the nature of public funds derived from taxation. The Court believes, however, that although these funds may be posted as a security, its collateralization should only be deemed effective during the incumbency of the public officers who approved the same, else those who succeed them be effectively deprived of its use.

In any event, it is observed that the proceeds from the Subject Loans had already been converted into public funds by the Municipality's receipt thereof. Funds coming from private sources become impressed with the characteristics of public funds when they are under official custody.³³

Accordingly, the first requisite has been clearly met.

Second, as a resident-taxpayer of the Municipality, Cacayuran is directly affected by the conversion of the Agoo Plaza which was funded by the proceeds of the Subject Loans. It is well-settled that public plazas are properties for public use³⁴ and therefore, belongs to the public dominion.³⁵ As such, it can be used by anybody and no one can exercise over it the rights of a private owner.³⁶ In this light, Cacayuran had a direct interest in ensuring that the Agoo Plaza would not be exploited for commercial purposes through the APC's construction. Moreover, Cacayuran need not be privy to the Subject Loans in order to proffer his objections thereto. In *Mamba v. Lara*, it has been held that a taxpayer need not be a party to the contract to challenge its validity; as long as taxes are involved, people have a right to question contracts entered into by the government.³⁷

³² Sec. 284 of the LGC provides as follows:

Sec. 284. *Allotment of Internal Revenue Taxes*. - Local government units shall have a share in the national internal revenue taxes based on the collection of the third fiscal year preceding the current fiscal year as follows: x x x x

³³ See *People v. Aquino*, G.R. No. L-6063, April 26, 1954.

³⁴ *Province of Camarines Sur v. CA*, G.R. No. 175064, September 18, 2009, 600 SCRA 569, 588-589.

³⁵ Art. 420 of the Civil Code provides:

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

(1) **Those intended for public use**, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character; x x x x (Emphasis supplied)

³⁶ *Province of Camarines Sur v. CA*, supra note 34, at 587, citing *In the Matter of Reversion/Recall of Reconstituted Act No. 0-116 Decree No. 388, Heirs of Palaganas v. Registry of Deeds, Tarlac City*, G.R. No. 171304, October 10, 2007, 535 SCRA 476, 484.

³⁷ *Mamba v. Lara*, supra note 31, at 162, citing *Abaya v. Ebdane, Jr.*, G.R. No. 167919, February 14, 2007, 515 SCRA 720, 758.

Therefore, as the above-stated requisites obtain in this case, Cacayuran has standing to file the instant suit.

B. Validity of the Subject Resolutions

Land Bank avers that the Subject Resolutions provided ample authority for Mayor Eriguel to contract the Subject Loans. It posits that Section 444(b)(1)(vi) of the LGC merely requires that the municipal mayor be authorized by the SB concerned and that such authorization need not be embodied in an ordinance.³⁸

A careful perusal of Section 444(b)(1)(vi) of the LGC shows that while the authorization of the municipal mayor need not be in the form of an ordinance, **the obligation which the said local executive is authorized to enter into must be made pursuant to a law or ordinance, viz:**

Sec. 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* -

x x x x

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

x x x x

(vi) Upon authorization by the *sangguniang bayan*, represent the municipality in all its business transactions and sign on its behalf **all bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance**; (Emphasis and underscoring supplied)

In the present case, while Mayor Eriguel's authorization to contract the Subject Loans was not contained – as it need not be contained – in the form of an ordinance, the said loans and even the Redevelopment Plan itself were not approved pursuant to any law or ordinance but through mere resolutions. The distinction between ordinances and resolutions is well-perceived. While ordinances are laws and possess a general and permanent character, resolutions are merely declarations of the sentiment or opinion of a lawmaking body on a specific matter and are temporary in nature.³⁹ As opposed to ordinances, “no rights can be conferred by and be inferred from a resolution.”⁴⁰ In this accord, it cannot be denied that the SB violated Section 444(b)(1)(vi) of the LGC altogether.

³⁸ Rollo, p. 26.

³⁹ *Municipality of Parañaque v. V.M. Realty Corporation*, 354 Phil. 684, 691-695 (1998).

⁴⁰ *Spouses Yusay v. CA*, G.R. No. 156684, April 6, 2011, 647 SCRA 269, 278.

Noticeably, the passage of the Subject Resolutions was also tainted with other irregularities, such as (1) the SB's failure to submit the Subject Resolutions to the *Sangguniang Panlalawigan* of La Union for its review contrary to Section 56 of the LGC;⁴¹ and (2) the lack of publication and posting in contravention of Section 59 of the LGC.⁴²

In fine, Land Bank cannot rely on the Subject Resolutions as basis to validate the Subject Loans.

⁴¹ Sec. 56. *Review of Component City and Municipal Ordinances or Resolutions by the Sangguniang Panlalawigan.* –

(a) Within three (3) days after approval, the secretary to the *sangguniang panlungsod* or *sangguniang bayan* shall forward to the *sangguniang panlalawigan* for review, copies of approved ordinances and the resolutions approving the local development plans and public investment programs formulated by the local development councils.

(b) Within thirty (30) days after receipt of copies of such ordinances and resolutions, the *sangguniang panlalawigan* shall examine the documents or transmit them to the provincial attorney, or if there be none, to the provincial prosecutor for prompt examination. The provincial attorney or provincial prosecutor shall, within a period of ten (10) days from receipt of the documents, inform the *sangguniang panlalawigan* in writing of his comments or recommendations, which may be considered by the *sangguniang panlalawigan* in making its decision.

(c) If the *sangguniang panlalawigan* finds that such an ordinance or resolution is beyond the power conferred upon the *sangguniang panlungsod* or *sangguniang bayan* concerned, it shall declare such ordinance or resolution invalid in whole or in part. The *sangguniang panlalawigan* shall enter its action in the minutes and shall advise the corresponding city or municipal authorities of the action it has taken.

(d) If no action has been taken by the *sangguniang panlalawigan* within thirty (30) days after submission of such an ordinance or resolution, the same shall be presumed consistent with law and therefore valid.

⁴² Sec. 59. *Effectivity of Ordinances or Resolutions.* –

(a) Unless otherwise stated in the ordinance or the resolution approving the local development plan and public investment program, the same shall take effect after ten (10) days from the date a copy thereof is posted in a bulletin board at the entrance of the provincial capitol or city, municipal, or barangay hall, as the case may be, and in at least two (2) other conspicuous places in the local government unit concerned.

(b) The secretary to the *sanggunian* concerned shall cause the posting of an ordinance or resolution in the bulletin board at the entrance of the provincial capitol and the city, municipal, or barangay hall in at least two (2) conspicuous places in the local government unit concerned not later than five (5) days after approval thereof.

The text of the ordinance or resolution shall be disseminated and posted in Filipino or English and in the language or dialect understood by the majority of the people in the local government unit concerned, and the secretary to the *sanggunian* shall record such fact in a book kept for the purpose, stating the dates of approval and posting.

(c) The gist of all ordinances with penal sanctions shall be published in a newspaper of general circulation within the province where the local legislative body concerned belongs. In the absence of any newspaper of general circulation within the province, posting of such ordinances shall be made in all municipalities and cities of the province where the *sanggunian* of origin is situated.

(d) In the case of highly urbanized and independent component cities, the main features of the ordinance or resolution duly enacted or adopted shall, in addition to being posted, be published once in a local newspaper of general circulation within the city: Provided, That in the absence thereof the ordinance or resolution shall be published in any newspaper of general circulation.

C. Ultra vires nature of the Subject Loans

Neither can Land Bank claim that the Subject Loans do not constitute *ultra vires* acts of the officers who approved the same.

Generally, an *ultra vires* act is one committed outside the object for which a corporation is created as defined by the law of its organization and therefore beyond the powers conferred upon it by law.⁴³ There are two (2) types of *ultra vires* acts. As held in *Middletown Policemen's Benevolent Association v. Township of Middletown*:⁴⁴

There is a distinction between **an act utterly beyond the jurisdiction of a municipal corporation** and the **irregular exercise of a basic power under the legislative grant in matters not in themselves jurisdictional**. The former are *ultra vires* in the primary sense and void; the latter, *ultra vires* only in a secondary sense which does not preclude ratification or the application of the doctrine of estoppel in the interest of equity and essential justice. (Emphasis and underscoring supplied)

In other words, an act which is outside of the municipality's jurisdiction is considered as a void *ultra vires* act, while an act attended only by an irregularity but remains within the municipality's power is considered as an *ultra vires* act subject to ratification and/or validation. To the former belongs municipal contracts which (a) are entered into beyond the express, implied or inherent powers of the local government unit; and (b) do not comply with the substantive requirements of law *e.g.*, when expenditure of public funds is to be made, there must be an actual appropriation and certificate of availability of funds; while to the latter belongs those which (a) are entered into by the improper department, board, officer or agent; and (b) do not comply with the formal requirements of a written contract *e.g.*, the Statute of Frauds.⁴⁵

Applying these principles to the case at bar, it is clear that the Subject Loans belong to the first class of *ultra vires* acts deemed as void.

Records disclose that the said loans were executed by the Municipality for the purpose of funding the conversion of the Agoo Plaza into a commercial center pursuant to the Redevelopment Plan. However, the conversion of the said plaza is beyond the Municipality's jurisdiction considering the property's nature as one for public use and thereby, forming

⁴³ *Republic v. Acoje Mining Company, Inc.*, G.R. No. L-18062, February 28, 1963, citing 19 C.J.S., Sec. 965, p. 419.

⁴⁴ 162 N.J. 361, 368 (2000), citing *Skulski v. Nolan*, 68 N.J. 179, 198 (1975).

⁴⁵ See ANTONIO E.B. NACHURA, *Outline Reviewer in Political Law* (2009), p. 602.

part of the public dominion. Accordingly, it cannot be the object of appropriation either by the State or by private persons.⁴⁶ Nor can it be the subject of lease or any other contractual undertaking.⁴⁷ In *Villanueva v. Castañeda, Jr.*,⁴⁸ citing *Espiritu v. Municipal Council of Pozorrubio*,⁴⁹ the Court pronounced that:

x x x Town plazas are properties of public dominion, to be devoted to public use and to be made available to the public in general. They are outside the commerce of man and cannot be disposed of or even leased by the municipality to private parties.

In this relation, Article 1409(1) of the Civil Code provides that a contract whose purpose is contrary to law, morals, good customs, public order or public policy is considered void⁵⁰ and as such, creates no rights or obligations or any juridical relations.⁵¹ Consequently, given the unlawful purpose behind the Subject Loans which is to fund the commercialization of the Agoo Plaza pursuant to the Redevelopment Plan, they are considered as *ultra vires* in the primary sense thus, rendering them void and in effect, non-binding on the Municipality.

At this juncture, it is equally observed that the land on which the Agoo Plaza is situated **cannot be converted into patrimonial property** – as the SB tried to when it passed Municipal Ordinance No. 02-2007⁵² – **absent any express grant by the national government**.⁵³ As public land used for public use, the foregoing lot rightfully belongs to and is subject to the administration and control of the Republic of the Philippines.⁵⁴ Hence, without the said grant, the Municipality has no right to claim it as patrimonial property.

Nevertheless, while the Subject Loans cannot bind the Municipality for being *ultra vires*, the officers who authorized the passage of the Subject Resolutions are personally liable. Case law states that public officials can be held personally accountable for acts claimed to have been performed in connection with official duties where they have acted *ultra vires*,⁵⁵ as in this case.

⁴⁶ Id. at 607.

⁴⁷ 238 Phil. 136, 142.

⁴⁸ Id. at 144.

⁴⁹ 102 Phil. 866, 869-870 (1958).

⁵⁰ Art. 1409. The following contracts are inexistent and void from the beginning:

(1) Those whose cause, object or purpose is contrary to law, morals, good customs,

x x x x

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived

⁵¹ See *Nunga, Jr. v. Nunga III*, G.R. No. 178306, December 18, 2008, 574 SCRA 760, 780.

⁵² *Rollo*, pp. 219-220.


⁵³ *Province of Camarines Sur v. CA*, supra note 34, at 588, citing *Municipality of San Carlos, Pangasinan v. Morfe*, 115 Phil. 608 (1962).

⁵⁴ Id.

⁵⁵ See *Chavez v. Sandiganbayan*, G.R. No. 91391, January 24, 1991, 193 SCRA 282, 289.

WHEREFORE, the petition is **DENIED**. Accordingly, the March 26, 2010 Decision of the Court of Appeals in CA-G.R. CV. No. 89732 is hereby **AFFIRMED**.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson

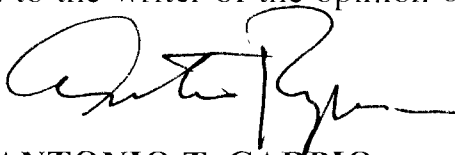

ARTURO D. BRION
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice

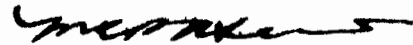
ATTESTATION

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


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

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



MARIA LOURDES P. A. SERENO
Chief Justice