

G.R. No. 199582 – JULIE PARCON-SONG, *Petitioner*, versus LILIA B. PARCON, joined by her husband JOAQUIN A. PARCON, MAYBANK PHILIPPINES, INC. (formerly PNB Republic Bank) and the REGISTER OF DEEDS OF QUEZON CITY, *Respondents*.

Promulgated:

July 7, 2020

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CONCURRING OPINION

HERNANDO, J.:

I fully concur in the disquisitions of the *ponencia* of Our esteemed colleague, Mr. Justice Marvic Mario Victor F. Leonen. I hasten to add, however, a brief discussion as to why the sale of the subject real property to Maybank is void *ab initio*.

Maybank harked upon Republic Act No. 10641 (RA 10641), or *An Act Allowing the Entry of Foreign Banks in the Philippines, Amending for the Purpose Republic Act No. 7721*. RA 10641 allowed foreign banks to foreclose and acquire mortgaged real properties in the Philippines. Section 6 thereof states:

Section 6. A new provision in Section 9 is hereby inserted in the same Act, in lieu of the original provisions of Section 9 repealed by Section 11 of Republic Act No. 10000. Section 9 shall now read as follows:

"SEC. 9. *Participation in Foreclosure Proceedings.*—Foreign banks which are authorized to do banking business in the Philippines through any of the modes of entry under Section 2 hereof shall be allowed to bid and take part in foreclosure sales of real property mortgaged to them, as well as to avail of enforcement and other proceedings, and accordingly take possession of the mortgaged property, for a period not exceeding five (5) years from actual possession: *Provided, That in no event shall title to the property be transferred to such foreign bank.* In case said bank is the winning bidder, it shall, during the said five (5)-year period, transfer its rights to a qualified Philippine national, without prejudice to a borrower's rights under applicable laws. Should the bank fail to transfer such property within the five (5)-year period, it shall be penalized one half (1/2) of one percent (1%) per annum of the price at which the property was foreclosed until it is able to transfer the property to a qualified Philippine national." (Emphasis supplied.)

RA 10641 was enacted in 2014. Established facts, however, show that Maybank acquired the subject real property by bidding and taking part in its

foreclosure sale in 2001. Thus, Maybank's insistence on RA 10641 is fruitless. The prevailing law that must be applied at the time of the sale is Republic Act No. 133, or *An Act to Authorize the Mortgage of Private Real Property in Favor of Any Individual, Corporation, or Association Subject to Certain Conditions*. Its Section 1, as amended by Republic Act No. 4882,¹ provides:

Section 1. Section one Republic Act Numbered One hundred thirty-three as heretofore amended by Republic Act Numbered Forty-three hundred eighty-one, is hereby further amended to read as follows:

"Sec. 1. Any provision of law to the contrary notwithstanding, private real property may be mortgaged in favor of any individual, corporation, or association, **but the mortgagee or his successor in interest, if disqualified to acquire or hold lands of the public domain in the Philippines, shall not take possession of the mortgaged property during the existence of the mortgage and shall not take possession of mortgaged property except after default and for the sole purpose of foreclosure, receivership, enforcement or other proceedings and in no case for a period of more than five years from actual possession and shall not bid or take part in any sale of such real property in case of foreclosure:** Provided, That said mortgagee or successor in interest may take possession of said property after default in accordance with the prescribed judicial procedures for foreclosure and receivership and in no case exceeding five years from actual possession." (Emphasis and underscoring supplied.)

Section 7, Article XII of the 1987 Constitution declares that private lands are transferrable only to individuals or entities qualified to hold or acquire lands of the public domain:

SECTION 7. Save in cases of hereditary succession, no private lands shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain.

It is long-settled that only Filipinos, whether individuals or corporate entities, may own Philippine lands.² As the basic exception to its general rule, Section 7 itself recognizes transfers to foreigners by way of hereditary successions.

Maybank, admittedly a foreign corporation 98%-owned by a Malaysian entity, obtained the subject real property in a foreclosure sale. Not being Filipino, it cannot acquire lands located in the Philippines, and any transfer to its name other than by hereditary succession of such lands, including the subject real property, is void.

¹ An Act to Amend Section One of Republic Act Numbered One Hundred Thirty-Three, Entitled "An Act to Authorize the Mortgage of Private Real Property in Favor of Any Individual, Corporation, or Association Subject to Certain Conditions", as Amended by Republic Act Numbered Forty-Three Hundred Eighty-One; approved June 17, 1967 and published October 30, 1967.

² Per *Krivenko v. Register of Deeds*, 79 Phil. 461 (1947); *Borromeo v. Descallar*, 599 Phil. 332 (2009); *Frenzel v. Katito*, 453 Phil. 885 (2003); and *Halili v. Court of Appeals*, 350 Phil. 906 (1998).

Transactions made in violation of the Constitution, like this one in present consideration, are void.

Also, contracts that trample upon public interest are contrary to public policy.³ Public biddings are imbued with public interest. *Power Sector Assets and Liabilities and Management Corporation v. Pozzolanic Philippines Incorporated*⁴ explains:

By its very nature, public bidding aims to protect public interest by giving the public the best possible advantages through open competition. Thus, competition must be legitimate, fair and honest. In the field of government contract law, competition requires not only bidding upon a common standard, a common basis, upon the same thing, the same subject matter, and the same undertaking, but also that it be **legitimate, fair and honest and not designed to injure or defraud the government**. An essential element of a publicly bidden contract is that "**all bidders must be on equal footing**, not simply in terms of application of the procedural rules and regulations imposed by the relevant government agency, but more importantly, on the contract bidden upon."⁵ (Emphasis supplied and citations omitted.)

Maybank disregarded the rules of public bidding by taking part therein despite its disqualification. It even emerged as the highest bidder. Necessarily, Maybank gained an undue advantage over all other foreign corporations who may have been interested in the subject property, and even colored the foreclosure proceedings with an anomalous tinge of favoritism. The resultant sale to a non-Filipino entity like Maybank from the said public bidding contravenes public policy and therefore void.

Agreements that violate the Constitution and public policy are inexistent and void from the beginning. The Civil Code declares so, *viz.*:

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, public order or public policy;

x x x x

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

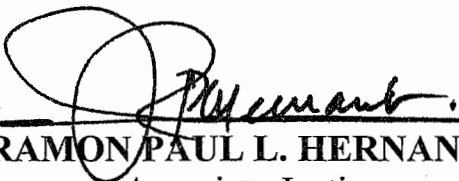
Withal, the sale of the subject real property to Maybank is void *ab initio*.

³ Per *Power Sector Assets and Liabilities and Management Corporation v. Pozzolanic Philippines Incorporated*, 671 Phil. 731; citing *Ongsiako v. Gamboa*, 86 Phil. 50 (1950).

⁴ *Id.*

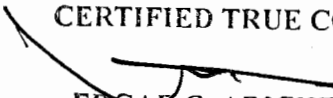
⁵ *Id.* at 753-754.

IN VIEW OF THE FOREGOING, I vote to **GRANT** the Petition in part, in consonance further with the reasons and dispositions of the *ponencia*.



RAMON PAUL L. HERNANDO
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court