REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

THIRD DIVISION

REPUBLIC OF THE PHILIPPINES, **Petitioner,** **- versus –** **ALFREDO T. ROMUALDEZ, *et al.*,** **Respondents.**	**Civil Case No. 0167** For: *Forfeiture of Unlawfully Acquired Property under R.A. No. 1379 in Relation to E.O. Nos. 1, 2, 14 and 14-A* *Present:* **CABOTAJE-TANG, *P.J.*,** Chairperson, **B. FERNANDEZ, *J.*** and **R. MORENO, *J.*** *Promulgated:* NOVEMBER 17, 2020

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RESOLUTION

CABOTAJE-TANG, P.J.:

For resolution is respondent Robinsons Land Corporation's (RLC) "*Manifestation and Motion for Preliminary Hearing on the Affirmative Defenses*"[1] dated November 4, 2019.

In its *motion,* respondent RLC submits that it is entitled to a preliminary hearing on its affirmative defenses set forth in its *Answer* dated August 13, 2018 pursuant to Section 6, Rule 16 of the 1997 Rules of Civil Procedure.[2]

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[1] pp. 483-494, Record, Vol. V

[2] **Section 6.** *Pleading grounds as affirmative defenses.* – If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss has been filed.

Initially, petitioner-Republic, represented by the Presidential Commission on Good Government (PCGG), through the Office of the Solicitor General (OSG), interposed no objection to the said *motion.*[3] Consequently, in its Resolution dated March 3, 2020,[4] the Court granted the motion and set the preliminary hearing on March 13, 2020. Pursuant thereto, respondent RLC submitted the Judicial Affidavit of Atty. Elaine M. Araneta[5] to form part of her direct testimony for the preliminary hearing. The preliminary hearing, however, did not take place as a precaution to the already impending declaration of the Enhanced Community Quarantine (ECQ) in Metro Manila due to the COVID-19 pandemic.

On July 1, 2020, the Court received petitioner-Republic's "*Opposition to the Conduct of Preliminary Hearing on Robinson Land Corporation (RLC)'s Affirmative Defenses*",[6] praying that no preliminary hearing be conducted and that the Judicial Affidavit of Atty. Araneta be expunged from the records of this case, based on the following grounds:

1. The Judicial Affidavit of Atty. Araneta contains other defenses which do not touch on the affirmative defenses of RLC. Instead, the matters raised therein constitute the whole defense raised in RLC's Answer and Pre-Trial Brief necessitating the conduct of a full-blown trial.

2. Romson Realty, Inc., RLC's transferor, has not yet been properly summoned and, therefore, not yet under the jurisdiction of the Court and has not yet filed a responsive pleading. It claims that as a transferor of the property, Romson would be able to shed light on the character of the transfer from Romson to RLC.

In its *Reply* dated September 9, 2020,[7] respondent RLC avers that petitioner is already barred and estopped from

[3] *Manifestation* dated December 9, 2019, pp. 132-135, Record, Vol VI
[4] Pp. 152, Record, Vol VI
[5] Pp. 194-259, Record, Vol VI
[6] Pp. 281-289, Record, Vol VI
[7] Pp. 376-387, Record, Vol VI

opposing the conduct of the preliminary hearing, pointing out that it failed to timely object to the conduct of a preliminary hearing as the Court already issued a *Resolution* granting its motion. Moreover, respondent RLC counters that the affirmative defenses in the Judicial Affidavit are the same affirmative defenses it raised in its *Answer*. Assuming *arguendo* that there are affirmative defenses raised in the Judicial Affidavit that were not raised in its *Answer*, the remedy of petitioner is to object and move for the striking of questions and answers relating thereto. Lastly, it argues that jurisdiction over respondent Romson is not necessary for the conduct a preliminary hearing since, as pointed out by petitioner, the present forfeiture proceeding is an action *in rem*.

THE RULING OF THE COURT

The Court resolves to deny the *motion*.

To begin with, petitioner originally interposed no objection to the conduct of a preliminary hearing on the affirmative defenses set up by respondent RLC. In fact, the Court had already set the date for said hearing on March 13, 2020. This, however, did not push through due to the COVID-19 pandemic.

It was only on July 1, 2020, or after the lapse of almost seven (7) months from the filing of the subject *motion*, that petitioner filed its *Opposition* to the conduct of the hearing. Thus, petitioner's *Opposition* is belatedly filed. Indeed, considering that it already previously manifested in writing its lack of objection and the considerable lapse of time that had passed, it is too late in the day for petitioner to oppose and question the conduct of a preliminary hearing.

In any case, there is a supervening event which significantly impacts on how the Court should rule on the present motion, namely: the *2019 Amendments to the Rules of Civil Procedure (2019 Amendments)* which took effect on May 1,

2020. It provides that it shall govern "all cases filed after their effectivity on May 1, 2020, and also all pending proceedings, except to the extent that in the opinion of the court, their application would not be feasible or would work injustice, in which case the procedure under which the cases were filed shall govern."[8]

After a careful consideration of the facts of the case vis-à-vis the new rules, the Court is of the opinion that the application of the new rules is neither unfeasible nor will work injustice to the parties involved in this case. In fact, it will be to the parties' advantage that the issues raised by RLC be resolved expeditiously.

Basis of respondent RLC's motion.
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Respondent RLC's motion is based on Section 6, Rule 16 of the *1997 Rules of Civil Procedure* which provides in part:

> **Section 6.** *Pleading grounds as affirmative defenses.* – If no motion to dismiss has been filed, any of the grounds for dismissal provided for in this Rule may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss has been filed.

The *2019 Amendments to the Rules of Civil Procedure* deleted the entire Rule 16 on motion to dismiss. Most of its provisions have been incorporated in the other rules.

As amended, the rules on affirmative defenses provide:

Rule 8
Manner of Making Allegations in Pleadings

[8] Rule 144, par. 2

Section 12. *Affirmative defenses.* – (a) A defendant shall raise his or her affirmative defenses in his or her answer, which shall be limited to the reasons set forth under Section 5(b), Rule 6, and the following grounds:

1. That the court has no jurisdiction over the person of the defending party;

2. That venue is improperly laid;

3. That the plaintiff has no legal capacity to sue;

4. That the pleading asserting the claim states no cause of action; and

5. That a condition precedent for filing the claim has not been complied with.

(b) Failure to raise the affirmative defenses at the earliest opportunity shall constitute a waiver thereof.

(c) The court shall *motu proprio* resolve the above affirmative defenses within thirty (30) calendar days from the filing of the answer.

(d) As to the other affirmative defenses under the first paragraph of Section 5(b), Rule 6, the court may conduct a summary hearing within fifteen (15) calendar days from the filing of the answer. Such affirmative defenses shall be resolved by the court within thirty (30) calendar days from the termination of the summary hearing.[9]

(e) Affirmative defenses, if denied, shall not be the subject of a motion for consideration or petition for *certiorari*, prohibition or *mandamus*, but may be among the matters to be raised on appeal after a judgment on the merits.

[9] Underlining supplied

Rule 6 mentioned in Section 6, Rule 8 above reads:

Rule 6
Kinds of Pleadings

Section 5. *Defenses.* – Defenses may either be negative of affirmative:

(a) A negative defense is the specific denial of the material fact or facts alleged in the pleading of the claimant essential to his or her cause or causes of action.

(b) An affirmative defense is an allegation of a new matter which, while hypothetically admitting the material allegations in the pleading of the claimant, would nevertheless prevent or bar recovery by him or her. The affirmative defenses include fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance.

Affirmative defenses may also include grounds for the dismissal of a complaint, specifically, that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment.

Based on the aforequoted provisions, it can be seen that unlike the former rules, the court is now required to *motu proprio* resolve the affirmative defenses raised within thirty (30) calendar days from the filing of the answer. Moreover, a summary hearing on the affirmative defenses may be conducted if the affirmative defenses are based on the first paragraph of Section 5(b), Rule 6, i.e., fraud, statute of limitations, release, payment, illegality, statute of frauds, estoppel, former recovery, discharge in bankruptcy, and any other matter by way of confession and avoidance.

Another significant change to the rules on affirmative defenses is that under the new rules, a motion to hear affirmative defenses is considered a prohibited motion[10]. This is in view of the mandatory nature of the resolution of the affirmative defenses. Indeed, a motion to hear affirmative defense/s would already be superfluous since the Court is already required to rule on them. However, the Court is given full or complete discretion whether or not to conduct a summary hearing should the affirmative defenses raised in the Answer be based on the grounds stated in the first paragraph of Section 5(b), Rule 6. Such summary hearing, however, cannot be secured by any of the parties by way of motion.

Thus, applying the new rules to this case, the Court is duty-bound to resolve the affirmative defenses raised by respondent RLC in its *Answer* dated August 15, 2018. The issue that presents itself then is whether or not a summary hearing should be conducted on the affirmative defenses raised.

To resolve this issue, a look at respondent RLC's *Answer* is necessary. In its *Answer*, respondent RLC enumerates the following as its affirmative defenses:

> **A.**
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> The instant proceeding is penal in nature. RLC was impleaded in this case without being afforded the right to a preliminary investigation. Thus, the case against RLC must be dismissed.
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> - Petitioner failed to comply with Section 2 of Republic Act (R.A.) No.1379, requiring the conduct of a previous inquiry similar to preliminary investigations in criminal cases.
> - The Sequestration Order dated 14 April 1986 is invalid for failure to comply with the PCGG Rules.
> - The enforcement of the Sequestration Order dated 14 April 1986 against respondent RLC is barred by prescription.

[10] Section 12, Rule 15

B.

Petitioner failed to prove the elements necessary to warrant a forfeiture of the property subject matter of the instant case.

C.

RLC's rights over the subject property cannot be disregarded because it is a purchaser in good faith.[11]

Notably, none of the above-cited grounds falls under paragraph 1, Section 5(b), Rule 6; hence, the conduct of a summary hearing is not permissible. Moreover, the Court can properly rule on the affirmative defenses raised by examining the documents attached to the pleadings of the respective parties.

While the claim that "Petitioner failed to comply with the requirement of a conduct of a previous inquiry similar to preliminary investigations in criminal case" may fall under the ground of "failure to comply with a condition precedent", the circumstances of this case present no need for a conduct of a summary hearing thereon.

An examination of the record of this case shows that the Ombudsman already conducted a previous inquiry similar to a preliminary investigation in 1991 in OMB-0-91-0820.[12] In ***Romualdez v. Sandiganbayan***,[13] the Supreme Court affirmed the ruling of this Court that the said preliminary inquiry satisfied the requirement under Section 2 of R.A. No. 1379.

The Court notes respondent RLC's argument that a previous inquiry should be conducted as to itself. However, this matter can be addressed without conducting a summary hearing. In this regard, the Court deems it wise to proceed to the resolution of all the affirmative defenses raised by RLC in

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[11] Respondent RLC's *Answer* dated August 15, 2018, pp. 4-5
[12] "Presidential Commission on Good Government v. Alfredo Romualdez."
[13] 625 SCRA 13 (2010).

its *Answer*, as required by the *2019 Amendments to the Rules of Court.*

It is jurisprudentially settled that forfeiture proceedings under R.A. No. 1379 are considered penal in nature. Thus, the Supreme Court has accorded respondents in those cases the rights akin to an accused in a criminal case, i.e. right against self-incrimination,[14] and right against double jeopardy.[15] Further, the law also requires the conduct of a previous inquiry similar to preliminary investigations in criminal cases before a petition is filed before the Court.[16]

In its *Answer,* RLC argues that the case against it must be dismissed for the failure to conduct a previous inquiry as to itself.

The Court disagrees.

To repeat, the record reveals that a previous inquiry similar to a preliminary investigation in criminal cases was conducted by the Ombudsman as early as 1991.[17] As previously stated, in ***Romualdez v. Sandiganbayan,***[18] the Supreme Court affirmed the ruling that the preliminary investigation conducted by the Ombudsman satisfied the requirement of R.A. No. 1379. Thus, a relitigation of the same issue would violate the principle of *res judicata.*[19]

The fact that there was no preliminary investigation or previous inquiry specifically as to RLC is inconsequential. Understandably, RLC was not included in said inquiry for the plain reason that it was not yet the registered owner of some of the properties involved in this case. It was simply impossible to

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[14] *Cabal v. Kapunan*, 6 SCRA 1059 (1962)
[15] *Republic v. Agoncillo, et. al.*, 40 SCRA 579 (1971)
[16] Section 2, R.A. No. 1379
[17] OMB-0-91-0820, "Presidential Commission on Good Government v. Alfredo Romualdez", pp. 665-674, Records Vol I
[18] *Supra* note 13
[19] *Ching v. San Pedro College of Business Administration*, G.R. No. 213197, October 21, 2015, 773 SCRA 570,589

conduct a previous inquiry against RLC when it did not own any property subject of this case during that time. Contrary to RLC's claim, the circumstances of this case are different from those in ***Spouses Ong v. Sandiganbayan***.[20] In ***Ong***, the properties alleged to be ill-gotten were already in the name of the Spouses Ong even before the case was filed. Thus, the Supreme Court ruled that Nelly Ong was denied due process when the Ombudsman did not give her notices or subpoena during the conduct of the preliminary investigation. In this case, RLC only became the owner of one of the properties involved in this case after its sale to it by Romson Realty in 2006. This was long after the petition for forfeiture was instituted. In fact, it is only by virtue of the said sale that RLC has been impleaded as one of the respondents in this case.

What further militates against RLC's demand for a preliminary inquiry is the fact that its inclusion as a respondent is not even required under the *Rules*,[21] being a *transferee pendente lite*. RLC itself acknowledged during the proceedings for its inclusion as respondent that it is not necessary for it to be impleaded as a respondent since it is not an indispensable party.[22] As a successor-in-interest of Romson Realty Inc, it is bound by any matter already adjudged against the latter whether or not it was impleaded. More importantly, forfeiture proceedings are actions *in rem*. Thus, RLC will be bound by any decision in this case whether or not it is impleaded. Indeed, its inclusion as a respondent was done precisely to protect its interest and right to due process.

There is likewise no merit to RLC's claim that this petition is barred by prescription since the Sequestration Order dated April 14, 1986, which it claims was used as basis for filing this case, can no longer be enforced against itself. In support

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[20] G.R. No. 126858, September 16, 2005.

[21] Rule 3, Section 19. *Transfer of interest.* – In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

[22] Respondent RLC's *Comment/Opposition (to the Petitioner's Motion for Leave of Court to Amend Supplemental Petition)* dated November 25, 2016, pp. 553-561, Record, Vol III

thereof, RLC cites Section 26, Article XVIII of the Constitution, which reads:

> **Section 26.** The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.
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> A sequestration or freeze order shall be issued only upon showing of a prima facie case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.
>
> The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.

To begin with, neither the *Petition, Supplemental Petition,* nor the *Amended Supplemental Petition* cites Sequestration Order dated April 14, 1986 as its basis. It does not also claim to seek the enforcement of said sequestration order. The original Petition clearly cites R.A. No. 1379 as basis for its claim, viz:

> 9. The properties and assets acquired by Alfredo during his incumbency as above shown, are manifestly out of proportion to his salaries and lawful family income. Pursuant to Republic Act No. 1379, said properties and assets are presumed to have been unlawfully acquired, and thus belong to petitioner.[23]

[23] p. 4, Record, Vol I

Petitioner-Republic's first reference to the sequestration order was in its *"Motion for leave to amend its Supplemental Petition"* as basis for the existence of a notice of *lis pendens* against the properties sold to respondent RLC.[24] It later cited the same in its Amended Supplemental Petition, but only to support its argument that Romson Realty was prohibited from transferring the properties under its name to respondent RLC.[25]

More importantly, RLC's invocation of Section 26, Article XVIII of the Constitution is highly misplaced. This petition is not the judicial action contemplated under the said section. The same section refers to enforcements of sequestration or freeze orders issued by the PCGG pursuant to Proclamation No. 3. On the other hand, petitions under R.A. No. 1379 may be filed even in the absence of a sequestration order or freeze order from the PCGG. In addition, it applies to all public officials and employees, as opposed to the sequestration orders issued by the PCGG which only cover ill-gotten wealth by the Marcoses and their cronies and dummies.

Finally, Section 15, Article XI of the 1987 Constitution explicitly provides that the right of the State to recover unlawfully acquired properties is **imprescriptible**, viz:

> Section 15. The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel.

Thus, even if the Sequestration Order dated April 14, 1986 was deemed automatically lifted pursuant to Section 26, Article XVIII of the Constitution, the State is not thereby barred from filing this petition against respondent Romualdez et al.

As to RLC's claims that the Sequestration Order dated April 14, 1986 is invalid, and that petitioner failed to prove the

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[24] Pp. 85, Record, Vol III
[25] Pp 123, Record, Vol III

elements necessary to warrant a forfeiture of the property in issue, these are matters of defense best tackled during trial on the merits as it goes into the crux of the issue. Lastly, RLC's claim that it is a purchaser in good faith is a question of fact which requires the presentation of evidence from both parties for proper resolution.[26]

WHEREFORE, respondent Robinsons Land Corporation's *Manifestation and Motion for Preliminary Hearing on the Affirmative Defenses* dated November 4, 2019 is **DENIED** for lack of merit.

SO ORDERED.

Quezon City, Metro Manila

AMPARO M. CABOTAJE-TANG
Presiding Justice
Chairperson

WE CONCUR:

BERNELITO R. FERNANDEZ
Associate Justice

RONALD B. MORENO
Associate Justice

[26] *Spouses Bautista v. Silva,* G.R. No. 157434, September 19, 2006