



Republic of the Philippines
COURT OF APPEALS
Manila

SIXTH (6th) DIVISION

* * * *

**MUNICIPALITY OF
TAGUIG (now CITY OF
TAGUIG),**

Plaintiff and Appellee,

-versus-

**MUNICIPALITY OF
MAKATI (now CITY OF
MAKATI), HON. TEOFISTO
P. GUINGONA, in his
capacity as Executive
Secretary, HON. ANGEL
ALCALA, in his capacity as
Secretary of Environment and
Natural Resources, HON.
ABELARDO PALAD, JR., in
his capacity as Director of
Lands Management Bureau,**

Defendants and Appellants.

CA-G.R. CV NO. 98377

Members:

**ABDULWAHID, H. S.,
Chairperson
GONZALES-SISON, M.,
and
SORONGON, E.D. JJ.**

Promulgated:

July 30, 2013

x ----- x

DECISION

GONZALES-SISON, M.,J:

This case involves the controversial territorial dispute between the Municipality of Taguig (now City of Taguig) and the Municipality of Makati (now City of Makati) over Fort Andres Bonifacio (formerly called Fort William McKinley).

The facts of the case are as follows:

On 22 November 1993, the City of Taguig (hereinafter referred to as "Taguig") filed a complaint before the Regional Trial Court of Pasig City (hereinafter referred to as the "lower court") to once and for all judicially declare its territory and boundary limits. More specifically, Taguig wants Fort Andres Bonifacio, formerly called Fort William McKinley (hereinafter referred to as the "disputed area"), consisting of 729.15 hectares in area, be judicially declared as Taguig's exclusive own.

Greatly to be affected by such Complaint is the City of Makati (hereinafter referred to as "Makati") which exercises jurisdiction over the disputed area. In response, Makati filed its answer and amended answer to specifically deny the allegations of Taguig, and claim rightful ownership over the disputed area.

Likewise impleaded by Taguig in its complaint are: Secretary Teofisto P. Guingona, in his capacity as Executive Secretary, Secretary Angel Alcala, in his capacity as Secretary of Environment and Natural Resources, and Director Abelardo Palad, Jr., in his capacity as Director of Lands Management Bureau.

Taguig's complaint included a prayer for a writ of preliminary injunction enjoining Makati from exercising jurisdiction over the area. The lower court granted the writ, prompting Makati to file a motion for reconsideration. When the lower court again denied the motion, Makati elevated the issue on certiorari to the Court of Appeals, which issued a decision lifting the preliminary injunction. Upon Taguig's motion, however, the Court of Appeals modified its decision by lifting the preliminary injunction only insofar as the areas covered by Makati's seven (7) Enlisted Men's barrios barangays namely: Cembo, South Cembo, Comembo, East Rembo, West Rembo, Pembo and Pitogo, were concerned. However, the preliminary injunction was sustained insofar as the other areas outside of said barangays are concerned, particularly where the military camp proper was located (or what is called the "Inner Fort").

Taguig then exercised its jurisdiction over the Inner Fort by building a police outpost in the Barangay Southside, within the Inner Fort. This, Makati questioned before the courts but to no avail.

Makati filed another petition for prohibition and mandamus before the Regional Trial Court of Makati and asked that the payments to Taguig of real estate taxes and other taxes and fees on lands located in Fort Bonifacio or the Barangay Post Proper Northside and Barangay Post Proper Southside, which have been conveyed to the Bases Conversion and Development Authority (BCDA) and the Fort Bonifacio Development Corporation (FBDC), by virtue of Special Patents No. 3595 and 3596, and declared to be situated in Taguig, be enjoined and that the special patents be declared unconstitutional. Again, this did not prosper before the courts. On February 10, 1995, Original Certificate of Title (OCT) No. SP-001 covering the tracts of land mentioned in Special Patent No. 3596 was issued to FBDC.

Meanwhile, the main case proceeded with the trial before the lower court. In the regular course of trial, both parties were given opportunities to present evidence and once finished, submitted their

respective formal offer of the evidence. Taguig filed its formal offer of evidence on August 19, 2009. On the other hand, after presenting its evidence, Makati filed its formal offer of evidence with motion to transfer marking on March 19, 2011. On June 22, 2011, the lower court issued an order for the parties to submit their respective memorandum within ten (10) days from notice. Taguig was able to file its memorandum, but Makati's motion to be given an extension to file its memorandum within 30-days from notice of the resolution granting the motion to transfer marking was denied by the lower court. On July 1, 2011, in an open session, the presiding judge of the lower court, Judge Ericcio C. Ygaña, informed the counsels for both parties that much to his desire to grant the motion of Makati, he cannot do so because he will be retiring on July 9, 2011, and in fact, this is the only case remaining in his sala since the court was able to dispose all the criminal, civil and special proceedings cases before it.

Consequently, on 8 July 2011, the lower court issued a decision, subject matter of this appeal, the decretal portion of which reads:

“WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Municipality, now City of Taguig, against all defendants, as follows:

1. Fort Bonifacio Military Reservation consisting of Parcels 3 and 4, Psu-2031, is confirmed as part of the territory of the plaintiff City of Taguig;
2. Proclamation No. 2475, Series of 1986 and Proclamation No. 518, Series of 1990 are hereby declared UNCONSTITUTIONAL and INVALID, insofar as they altered boundaries and diminished the areas or territorial jurisdiction of the City of Taguig without the benefit of a plebiscite as required in Section 10, Article X of the 1987 Constitution.
3. Making the Writ of Preliminary Injunction dated August 2, 1994 issued by this Court, explicitly referring to

Parcels 3 and 4, Psu-2031 comprising Fort Bonifacio, be made PERMANENT, to wit:

a) enjoining defendants Secretary of the Department of Environment and Natural Resources and Director of Lands Management Bureau, from disposing of, executing deeds of conveyances over, issuing titles, over the lots covered by Proclamation Nos. 2475 and 518; and

b) enjoining the Municipality, now City of Makati from exercising jurisdiction over, making improvements on, or otherwise treating as part of its territory, Parcels 3 and 4, Psu-2031 comprising Fort Bonifacio; and

4. Ordering defendants to pay cost of the suit.

SO ORDERED."¹

Dissatisfied with the above decision, Makati filed a motion for reconsideration thereto. At the same time, Makati also filed a petition for annulment of judgment before the Court of Appeals on the ground that the judgment was rendered after the retirement of Judge Ygaña. The lower court's pairing judge, Judge Leila Cruz-Suarez, heard the motion. After a series of motions and oppositions, Makati asked Judge Suarez to inhibit from the case. Judge Suarez, however, in an order dated 19 December 2011 denied the motion of Makati on the grounds that (a) there is nothing improper and illegal for Judge Ygana to adopt the narratives and arguments in the memorandum of Taguig since memorandum and briefs precisely aid the courts in writing decisions; (b) Judge Ygana had been at the helm of this case since its pre-trial stage until its conclusion thereby affording him the advantage of familiarity with the story of the case; (c) the decision stated sufficient findings of fact and the law on which it was based, and when Judge Ygana considered all the evidence

¹ Records, Vol XIV, p. 369.

presented by both parties concluded that the greater weight of evidence was in favor of Taguig; and (d) that Makati was guilty of forum-shopping. The decretal portion of the assailed December 19, 2011 order reads:

“WHEREFORE, the Motion for Reconsideration *Ad Cautelam* is DENIED.

SO ORDERED.”²

As a consequence, on January 5, 2012, Makati filed its Notice of Appeal *ad cautelam*³ questioning assailed decision and order. Taguig, in response, filed a motion to dismiss appeal on January 25, 2012 on the ground of forum-shopping.

Hence, this decision.

Version of Facts

There are two versions of the story, one according to Taguig, and the other, Makati.

Version of Taguig

Taguig claims that it has been in existence as a political subdivision since April 25, 1587 or for 426 years, initially as a *pueblo* of the Province of Manila during the Spanish occupation. Later, it became a municipality of the Province of Rizal per General Order No. 40 dated March 29, 1900 and Act No. 137 enacted on June 11, 1901 from the American occupation up to 1974, and still later as a municipality, then a city in Metropolitan Manila. It allegedly covers a

² Records, Vol. XVI, p. 103.

³ Records, Vol. XVI, p. 122.

total area of 4,520.6913 hectares, more or less, bounded on the Northwest by Makati, on the North by the Pasig River, the Pateros along the Manunuyo Creek, and Pasig, on the East by Taytay along Rio del Pueblo and Laguna de Bay, on the South by Muntinlupa, and on the West by Parañaque and the P.N.R. Property.

On October 3, 1902, the Government of the United States of America (hereinafter referred to as the U.S. Government) established a military camp called "Fort William McKinley" on a vast tract of land, allegedly claimed by Taguig as mainly situated in Taguig. The U.S. Government was said to have expanded this Fort William McKinley acquiring the entire Hacienda Maricaban located in Taguig, Pasay, and Parañaque in 1906. This bigger tract of land was said to have been already registered under the Torrens System as Original Certificate of Title (OCT) No. 291. By virtue of the transfer to the U.S. Government, the said bigger tract of land was registered as Transfer Certificate of Title (TCT) No. 1219, which was cancelled and became TCT No. 1688, which also was later cancelled and became TCT No. 2288.

Taguig had this tract of land surveyed by a certain Ramon Pertierra, who came up with the plan denominated as Psu-2031. Basically, the tract of land was divided/denominated in four parcels, namely: Parcel 1 becoming Pasay, Parcel 2 as Parañaque, Parcels 3 and 4 as Taguig (with Parcel 4 as the area that is allegedly mainly situated in Taguig, Fort William McKinley). Said survey plan indicated the boundaries in dark lines. It reflected that Parcel 4 was bounded by the San Jose Creek, separating it from the Guadalupe Estate and a portion of the San Pedro Macati Estate. Allegedly, this shows that Parcel 4 is inside Taguig and Pasig. While Parcels 2 and 3 have the Dilain Creek joining Ventura Creek (now Maricaban Creek) as a common boundary in the North with the San Pedro Macati Estate.

Taguig claims that said survey plan became the reference for subsequent surveys for adjoining municipalities. For example, the Pasay Cadastre covered the portion of Psu-2031 up to the MRR tracks. The San Pedro Macati Estate and Guadalupe Estate found to be part of Pasay in 1909 were included, however, in the Makati Cadastre (MCADm-571-D). The Pasig Cadastre (MCADm-579-D) covered the area up to the Pasig River in the South. While Parcels 3 and 4 were included in the Taguig Cadastre.

Pursuant to the Tydings-McDuffie Act enacted by the Congress of the United States of America, establishing the Philippines' independence from the United States, the U.S. Government ceded its former military camps, including Fort William McKinley, to the Republic of the Philippines. Thus, TCT No. 2288 became TCT No. 61524 in the name of the Republic.

On July 12, 1957, President Garcia issued Proclamation No. 423 renaming Fort William McKinley as Fort Andres Bonifacio, which is situated in the municipalities of Taguig, Pasig, Parañaque and Pasay.

It was said that Proclamation No. 423 excluded Parcels 1 (Pasay) and Parcel 2 of Psu-2013 from Fort Bonifacio to become the Villamor Airbase and the Civil Aeronautics Complex (now Manila International Airport). Thus, by virtue of this Proclamation, Taguig claims that it was long-established that Fort Bonifacio is situated in Taguig.

Taguig claimed that in fact, up to the creation of Barangay Western Bicutan in 1964, Fort Andres Bonifacio was part of Barrio Ususan in Taguig. After the creation of and up to 2008, it fell under the jurisdiction of Barangay Western Bicutan.

Further, on September 15, 2008, the Sangguniang Panglungsod of Taguig City enacted Ordinances No. 67, 68, and 78, whereby Barangay Western Bicutan was divided into three barangays (Barangay Pinagsama, Barangay Fort Bonifacio, and Barangay

Western Bicutan). The Commission on Elections held a plebiscite throughout the former Barangay Western Bicutan, as a consequence of which, the Plebiscite Board issued Certificates of Canvass of Votes and Proclamation in connection with the plebiscites to ratify the creation of Barangay Fort Bonifacio and Barangay Pinagsama.

However, then came Proclamation No. 2475 issued by President Marcos on January 7, 1986, disregarding in effect the claim of Taguig over Fort Bonifacio by stating that the same falls under the jurisdiction of Makati City.

On January 31, 1990, President Corazon C. Aquino issued Proclamation No. 518, modifying Proclamation No. 2475 wherein it is stated that the tracts of land subject thereof are situated in Makati although they are admittedly parts of Fort Bonifacio.

Thus, Makati exercised jurisdiction over the areas where the so-called Military Barangays of Cembo, South Cembo, West Rembo, East Rembo, Comembo, Pembo and Pitogo are situated.

Taguig claims that Makati's officials at the time, in defiance of the jurisdiction of Taguig and in violation of the law, caused the inclusion of about seventy four (74) hectares more than what was actually resided upon in the aforesaid barangays as of 1985 and the declaration of said farmlands as open for disposition. Likewise, Makati started to build structures on open spaces in Parcel 4 (Inner Fort) without any Proclamation or Presidential issuance to back up its move. Taguig claims that Makati exercising jurisdiction over parcels of land that are part of the Inner Fort, compelled it to file the case for territorial boundaries.

Version of Makati

On the other hand, Makati claims that Fort William McKinley was once part of a large estate called Hacienda Maricaban owned by Dolores Pascual Casal. The hacienda was so large that it fell under

the jurisdictions of several towns, including San Pedro Macati. Based on a plotting made, the town of San Pedro Macati exercised jurisdiction over an area of 324 hectares in the northeast portion of the hacienda. On August 5, 1902, Dolores Pascual Casal sold the northeastern portion of the hacienda to the U.S. Government. The description of the portion sold contained in the Sale of Land match the measurements contained in the map of the Fort William McKinley Military Reservation. The 324 hectare area under the jurisdiction of San Pedro Macati was entirely within the portion sold.

Further, in the 1918 and 1948 Census conducted by the U.S. Government in the Philippines, Fort William McKinley was specifically listed and included as one of the barrios of Makati.

In 1950, after the Philippines gained independence from the United States of America, Fort William McKinley was turned over to the Philippine Government and renamed Fort Andres Bonifacio Military Reservation under the direct authority of the Armed Forces of the Philippines.

In the 1960's the families of the AFP's enlisted men were allowed to occupy areas within the military camp, where they eventually established the Enlisted Men's Barrios or EMBO's. At the same year, the Inner Fort barangays (Barangay Post Proper Northside and Barangay Post Proper Southside) were also established.

Since 1975, the Inner Fort barangays have been participating in the national and local political exercises as barangays of Makati. The census conducted by the National Census and Statistics Office for the years 1970, 1975, and 1980 listed the EMBO barangays and Inner Fort barangays under Makati.

In 1979 a cadastral mapping was done by DENR, MCADm-571-D, including the disputed area as Makati's.

In 1986, President Marcos issued Presidential Proclamation 2475 excluding a portion of Fort Bonifacio from the military reservation - the EMBO barangays - situated in Makati and declaring it open to disposition to entitled residents therein. Since this demilitarization, a numerical cadastral survey was finally allowed in that area and the resulting plan, SWO-13-000358 Amd. was approved on 21 September 1988. The said SWO states the location of the EMBO barangays as within Makati.

In 1990, President Aquino issued Presidential Proclamation No. 518, changing the manner of disposition of the areas excluded from Fort Bonifacio Military Reservation under the earlier Presidential Proclamation No. 2475. Again, the EMBO barangays was stated as within Makati, and embraced within Fort William McKinley.

When the cityhood bill of Makati was being deliberated in Congress in 1993, this case was filed by the City of Taguig naming as respondents, Makati, Secretary Teofisto P. Guingona, in his capacity as Executive Secretary, Secretary Angel Alcala, in his capacity as Secretary of Environment and Natural Resources, and Director Abelardo Palad, Jr., in his capacity as Director of Lands Management Bureau.

In 1994, MCAD-571-D was approved by the DENR-NCR and became the final survey plan which superseded the 1979 cadastral mapping, MCADm-571-D. It clearly shows therein that the entire Fort Bonifacio, where the EMBO barangays and the Inner Fort barangays are located, are within the territorial jurisdiction of Makati.

The COMELEC, up to recent elections, the Inner Fort barangays (Barangay Post Proper Northside and Post Proper Southside) have participated in the national and local electoral exercises conducted in Makati.

Even before the boundary dispute and up to the present, Makati has actually exercised jurisdiction over the Fort Andres

Bonifacio as depicted by the delivery of basic services and other financial and social benefits or assistance to its EMBO barangays and Inner Fort barangays.

As aforestated, with the adverse decision rendered by the lower court, defendant-appellant Makati now comes to this Court for reliefs, and in support thereof, assigns the following errors for Our consideration, to wit:

I.

THE LOWER COURT ERRED IN ACCEPTING AS ADMISSIBLE TAGUIG'S EVIDENCE.

II.

THE LOWER COURT ERRED IN DECLARING THE DISPUTED AREA AS PART OF THE TERRITORY OF TAGUIG.

III.

THE LOWER COURT ERRED IN DECLARING PROCLAMATION NO. 2475 AND PROCLAMATION NO. 518 AS UNCONSTITUTIONAL AND INVALID.

Before going to the meat of the issue, Taguig in its *Brief* stressed at the outset that Makati has refused to assign as an error the lower court's decision in the motion for reconsideration declaring that Makati was guilty of forum-shopping in filing both a motion for reconsideration in the lower court and a petition for annulment of judgment before this Honorable Court.

However, said issue has been resolved by this Court's Seventh (7th) Division in a Resolution dated 30 April 2013⁴ rejecting the

⁴ In CA G.R. SP No. 120495, Cited in Manifestation and Motion filed by Taguig dated 23 May 2013, Rollo, p. 425.

ground of forum shopping as basis for dismissal of Makati's petition for annulment of judgment, hence the issue of forum shopping has been rendered moot.

Further, even the lower court, through Judge Suarez, recognized Makati's right to appeal:

“There was still an available remedy to Makati and it correctly and timely filed the present Motion for Reconsideration *Ad Cautelam*. If applicable, there is still another remedy available to either party, appeal to the Court of Appeals and the Supreme Court.

Among the sanctions provided by the Rules and jurisprudence when there is forum-shopping is the summary dismissal of the action with prejudice.

However, this Court would not strictly apply the sanctions provided in order to give the parties the full measure of the proceedings that they are allowed to avail of under the law after the issuance of this order.

Makati is not being left empty-handed. Since the Motion for Reconsideration *Ad Cautelam* was filed on the last day, July 28, 2011, Makati has, under the 'fresh period rule', another fifteen (15) days from receipt of this Order denying the Motion for Reconsideration *Ad Cautelam*, within which to file its Notice of Appeal with the accompanying payment of appellate docket fees paid to the Office of the Clerk of Court, Regional Trial Court, Pasig City.”⁵

5 Order dated December 19, 2011, pp. 13-14, Records, Vol XVI, pp. 157-158.

Consequently, after sifting through the facts of the case as guided by the applicable laws and jurisprudence, this Court finds merit in the instant appeal.

I. The lower court erred in accepting as admissible Taguig's evidence.

In the assailed decision rendered by the lower court, the following documents were enumerated as main evidence that the disputed area falls within the jurisdiction of Taguig:

“The fact that the Fort is situated at and included in its territory is evidenced by the following documents, to wit:

(1) *General Order No. 104* dated October 3, 1902 of Elihu Root, Secretary of War of the United States of America, announcing the acquisition of a vast tract of land for the establishment of a military reservation, which tract of land is a part of the Hacienda de Maricaban and is bounded on the North by stone monuments along the San Jose Creek in the Barrio of Guadalupe, Rizal (now, Barangay Guadalupe, Makati).

(2) *Plan Psu-2031* covering Parcels 1,2,3 and 4 of the Hacienda de Maricaban, showing that parcels 3 and 4 which presently comprised the FORT, with the exception of a small portion, are within the plaintiff municipality and that the boundary of the FORT on the North consists of the San Pedro Makati Estate OR the property of Pedro Roxas and the Guadalupe Estate OR the property of Agricola de Ultanar.

(3) *Plan BSD-10178* which is a subdivision plan of Parcel 4, Psu-2031, as prepared and surveyed for the United States Government in 1949, showing that Parcel 4-A owned by the Republic of the Philippines and Parcel 4-B covering the National Battles Monuments Cemetery and owned by the U.S. Government are both situated in the Barrio Ususan, Municipality of Taguig.

(4) **Presidential Decree No. 423** signed by the President Carlos P. Garcia on July 12, 1957 (53 O.G. No. 22, 8011-8015), reserving for military purposes the parcels of land Parcel No. 4, Psu-2031, on which parcels of land excluding Parcel No. 2, the present Fort was established for the Republic of the Philippines, and stating that the Fort is situated in the plaintiff and that the Boundary of Parcel 3 on the North is the San Pedro Makati Estate while the boundary of Parcel 4 also on the North is the Guadalupe Estate.

(5) **Transfer Certificate of Title No. 61524** of the Register of Deeds of Rizal which is the latest title covering Parcel 3, Psu-2031, showing that the parcel of land covering thereby is situated in the plaintiff and the boundary of the property on the North is the San Pedro Makati Estate of Pedro P. Roxas.

(6) **Sketch Plan SK-13-000011 Amd.** which is the Sketch Plan of the Boundary of the Municipal Government of Makati prepared on August 16, 1993 by the Lands Management Bureau, DENR/NCR which clearly shows on its face that the fact is part of the plaintiff evidenced by the words: "TAGUIG CADASTRAL MAPPING Mcadm-590-D (Case 17)" printed across the area in the plan covering part of the Fort.

(7) **Municipal Boundary Map of Makati** (Mcadm-571-D, Makati Multi-Purpose Cadastre), prepared and approved by the Lands Management Bureau, which show that the boundary of the defendant municipality on the North is along the San Jose Creek, and on the Northwest along Maricaban Creek, and the Fort which is located beyond or after said boundaries, is not part of the defendant municipality as it is located in Taguig.

(8) In all **Presidential issuances, Torrens titles, official documents and plans** except for one, defendant municipality is not mentioned as the situs or location of the Fort but only as the boundary of the Fort on the North.

(9) Even Proclamation 2475 dated January 7, 1986 is the only Proclamation where it is recited that the Fort is within defendant municipality, was rectified by **Proclamation No. 518** dated January 31, 1990 by purposely omitting defendant municipality as a situs of the Fort.

Makati, in its Appellant's Brief Ad Cautelam rebuts the above-stated documentary evidence as follows:

(1) Nowhere in General Order No. 104 does it state that the disputed area is "mainly situated in Taguig". Rather, according to the Spanish book of registry of real properties in 1891 titled "Cuaderno Suppletorio del Registro de Anotaciones de Titulos de Propiedad de Terrenos Espedidos por la Direccion General de Administracion Civil", the Hacienda Maricaban was a large tract of land that fell under the jurisdiction of several towns, which are: San Pedro Macati, Pasig, Taguig, Pateros, Pineda, Parañaque and Malibay. The English translation of the said "Cuaderno Suppletorio" provided by Makati's expert witness, Prof. Romanillos, was never rebutted by Taguig and could not substantiate with proof that said document was spurious.

(2) In the **Sale of Land** between Dolores Pascual Casal and the U.S. Government in 05 August 1902, barely two (2) months prior to the enactment of General Order No. 104, the Hacienda Maricaban was clearly described and was said to be under the jurisdictions of above-mentioned towns. The description of that portion of the hacienda that was under the San Pedro Macati jurisdiction was plotted and drawn into a map by expert witness Engr. Almeda, Jr. using Plano dela Hacienda Maricaban and the Map of Fort William McKinley obtained from the United States National Archives. As shown in the map, the land sold to the U.S. Government was the northern portion of the hacienda outside that portion that fell under the jurisdiction of Taguig. However, that portion sold included the portion under the jurisdiction of San Pedro Macati, Pasig and Pateros. This map drawn by Engr. Almeda, Jr. was certified correct by the DENR-NCR, through its Regional Technical Director, OIC, Arturo E.

*Fadriquela. Within this sold portion, is Fort William McKinley Military Reservation. The remaining portion of the Hacienda Maricaban **excluded** in the sale, and therefore excluded in General Order No. 104, was eventually registered through a Decree issued by the Court of Land Registration on 01 October 1906 (Decreto No. 1368) in the name of Dolores Pascual Casal, and the resulting title was OCT No. 291. The land covered by OCT No. 291 are under the jurisdictions of Taguig, Pasay and Parañaque. Thus, Taguig's evidence, General Order No. 104 and OCT No. 291 are actually irrelevant as it was outside Fort William McKinley Military Reservation. (underscoring emphasis supplied)*

(3) Transfer Certificate of Title No. 1219 that was used by Taguig supposedly derived from OCT No. 291 is undocumented, as testified to by witness Mr. Eduardo Santos, Chief of the Vault Section of the Docket Division of the Land Registration Authority. The incorporation of this document in the assailed decision, being provisionally marked photocopy and not presented and identified, shows the partiality and bias of RTC-Pasig with Taguig. Further, as stated above, OCT No. 291 that supposedly falls within the jurisdiction of Taguig, Pasay and Parañaque is outside the Fort William McKinley.

*(4) Uncontroverted was the evidence of Makati that OCT No. 291 was outside Fort William Mckinley. After the U.S. Government acquired the property registered under OCT No. 291, the title was transferred and registered as TCT No. 1688 and subsequently, as TCT No. 2288. Both titles' technical descriptions **excluded** Fort William McKinley.*

(5) TCT No. 2288 was transferred from the U.S. Government to the Republic of the Philippines and registered under TCT No. 61524, and again being derived from OCT No. 291, it excludes the area of Fort William McKinley.

(6) Plan Psu-2031 is fake, dubious and absolutely unreliable. The plan showing "Municipality of Pasay" over the area of the map where Makati should be makes it appear that there is no Makati.

The plan should not also have been admitted on evidence, it being a mere photocopy, was never identified and authenticated during trial, thus violating the rule on best evidence. Not one of the witnesses of Taguig testified on the exhibit Plan Psu-2031 as the original or certified true copy thereof.

(7) Further, Plan Psu-2031, even if presented in the original and true copy, denotes only "private land survey" (Psu) and not political boundary survey, which according to the Manual of Land Surveys, is the survey undertaken to define or establish the respective boundaries of government units. Rather, the numerical cadastral survey presented by Makati conducted by Engr. Medina and approved by DENR Regional Director Eriberto V. Almazan is a political boundary survey.

(8) It is wrong for Taguig to use Presidential Proclamation No. 423 as the proclamation states technical descriptions of lands Parcels 3 and 4 of Plan Psu-2031 as both situated in Fort William McKinley, Rizal. There is no reference to Taguig.

(9) RTC-Pasig shows its partiality and bias by using an exhibit (Exb. "YY", proclamation by Governor General Leonard Wood describing a portion of Parcel 2 denominated as Lot 2-A as open for disposition) that was previously withdrawn by Taguig in its Formal Offer of Evidence, which again violates the rules on evidence and due process.

(10) Taguig never presented any evidence that the disputed area had been under the jurisdiction of Taguig's Barangay Western Bicutan from 1965 to 2008. Such statements, even the Certificates of Canvass of Votes and Proclamation were merely alleged for the first time in its Memorandum, but were never presented, marked, and offered in evidence. Yet, RTC-Pasig used these as part of the evidence that proves Taguig's jurisdiction over the disputed area.

(11) Also, Taguig's Memorandum cited as Exhibit D a map of Parcel 4 of PSU-2031 as proof that it is located in Ususan, Taguig. But this map is another unauthenticated photocopy, which was never presented and identified during the trial, violating the rule on best evidence and hearsay.

(12) *Other evidence cited by RTC-Pasig that was either not presented, authenticated or cited but could hardly pass off as evidence.*

(13) *When Makati's Cityhood Bill was being deliberated in Congress, then DENR Regional Technical Director Eriberto V. Almazan supposedly wrote a letter to then Congressman of Taguig, Dante O. Tinga and to the Chairman of the House Committee on Local Government to disprove Makati's claim over the disputed area. However, what was submitted during trial were mere photocopies, and Director Almazan was never presented to affirm the contents of his letters and be subjected to cross-examination. Thus, said letters are considered hearsay and has no probative value.*

(14) *Presidential Decree No. 2475 and Presidential Decree No. 518 do not alter the municipal boundaries between Makati and Taguig but rather merely affirms that the EMBO barangays already existed within the territorial jurisdiction of Makati, prior to the issuance of these Proclamations. This is proven by the censuses conducted by NCSO (now NSO) for the years 1970, 1975, and 1980, which listed the EMBO barangays and the Inner Fort Barangays under the territory of Makati. The area of the EMBO Barangays and Inner Fort Barangays is the formerly known Fort William McKinley, the disputed area, has always been a part of the jurisdiction of Makati. Thus, having nothing to do with the creation of barangays or the alteration of boundaries, these two (2) proclamations could not have violated Section 10, Article X of the 1987 Constitution.*

(15) *Makati's un rebutted evidence conclusively prove its territorial jurisdiction over the disputed area. Example, the 1918 Census conducted by the Oficina Del Censo De Las Filipinas, listed Fort William McKinley as among the barrios located at and within the jurisdiction of Makati. Likewise, the subsequent Census conducted in 1948 by the Bureau of the Census and Statistics also listed Fort William McKinley as among the barrios located at and within the jurisdiction of Makati. Then, Fort William McKinley was renamed Fort Andres Bonifacio and the filipino soldiers and*

their families resided within the military reservation and these families eventually established the EMBO barangays with Fort Andres Bonifacio. Numerous other documents that were never rebutted by Taguig.

(16) MCADm-571-D affirms the political boundaries of Makati. The annotation Case 17 vs. Makati Cadastre within the portion representing the Inner Fort was directed by DENR-NCR to be placed merely as an acknowledgement of the dispute initiated by Taguig but the area outside Case 17 vs. Makati Cadastre is where the EMBO Barangays are located showing that Makati's jurisdiction over these barangays was never in dispute.

(17) Furthermore, Taguig's admissions contained in its complaint are the best evidence of Makati's control and jurisdiction over the disputed area. All the improvements and infrastructures which Makati had introduced in the disputed area even prior to Proclamations 2475 and 518 are all in exercise of Makati's jurisdiction over the disputed area.

It is noteworthy to point, however, that the lower court merely replicated the arguments raised in Taguig's memorandum into its assailed decision, and as a result, it utilized evidence that were not properly identified, authenticated, and cross-examined in order to have probative value.

In *Donnina C. Halley vs. Printwell, Inc.*,⁶ the Supreme Court held that:

“xxx the judge may adopt and incorporate in his adjudication the memorandum or parts of it he deems suitable and yet not to be guilty of the accusation of lifting or copying from the memorandum.”

⁶ G.R. No. 157549, 30 May 2011.

We agree with the above statement of the Supreme Court because necessarily in coming up with a judicial decision, the same must be based on the facts surrounding the case, and the laws and arguments adduced by the party-litigants which may all be seen from the records of the case. Even this Court, from time to time, have directly lifted from the records of the case, quite axiomatically.

However, this is provided that what were copied were correct statements of the facts and the law on which they are based. Precisely, Makati in its *Reply Brief ad cautelam* states that “*it is not just the copying but the injudicious copying of Taguig's Memorandum that is the point.*”⁷

In the acceptance of party-litigants' evidence, the same must have been reviewed and evaluated in order to know who or which has greater weight of evidence *or preponderance of evidence* as required in civil cases such as the case at bar. It is not a mere incorporation of statements.

Verily, in the case of *Spouses Nilo Ramos and Eliadora Ramos vs. Raul Obispo and Far East Bank and Trust Co.*,⁸ the Supreme Court had an occasion to state that:

In civil cases, basic is the rule that the party making allegations has the burden of proving them by a preponderance of evidence. Moreover, parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their proponent. This principle equally holds true, even if the defendant had not been given the opportunity to present evidence because of a default order. The extent of the relief that may be granted can only be as much as has been alleged and proved with preponderant evidence required under Section 1 of Rule 133 of the Revised Rules of Evidence.

⁷ Rollo, p. 383.

⁸ G.R. No. 193804, February 27, 2013.

Preponderance of evidence is the **weight, credit and value of the aggregate evidence** on either side and is usually considered to be synonymous with the term “greater weight of the evidence” or “greater weight of the credible evidence.” Preponderance of evidence is a phrase which, in the last analysis, means **probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.** (emphasis supplied)

We believe, however, that contrary to the findings of the lower court as between pieces of evidence presented, Taguig was not able to prove this *greater weight of evidence* to merit a favorable decision.

Accordingly, Makati was correct to point that the lower court passed off as evidence those documents that were neither presented, authenticated, or worse, withdrawn during the course of the trial violating the rules on evidence and due process.

Relevantly, the best evidence rule under Rule 130, Sections 2 and 3 of the Revised Rules of Civil Procedure states that:

Section 2. Documentary Evidence - Documents as evidence consist of writings or any material containing letters, words, numbers, figures or other modes of written expressions offered as proof of their contents.

Section 3. *Original document must be produced; exceptions.* - When the subject of the inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the other party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

Furthermore, the case of *The Consolidated Bank and Trust Corporation (Solidbank) vs. Del Monte Motor Works, Inc.*,⁹ quoted McCormick, an authority on the rules of evidence that “*the only actual rule that the 'best evidence' phrase denotes today is the rule requiring the production of original writing*” the rationale being:

“(1) that precision in presenting to the court the exact words of the writing is of more than average importance, **particularly as respects operative or dispositive instruments, such as deeds, wills, and contracts, since a slight variation in words may mean a great difference in rights, xxx xxx xxx.**”

Since the evidence adduced are mostly, if not all, documentary evidence, they must be testified on, duly authenticated by a competent witness, and rightfully cross-examined so that the document could have probative value.

⁹ G.R. No. 143338, August 29, 2005.

The questionable pieces of evidence by Taguig which were cited by the lower court in coming up with its assailed decision include the original of Plan Psu-2031,¹⁰ the map that proves that the disputed area was within the jurisdiction of Taguig, which was, however, never identified nor authenticated before the lower court; the original of Transfer Certificate of Title No. 1219¹¹ where OCT No. 291 was based and evidence purporting to the fact that Fort William McKinley was part of Barangay Western Bicutan was likewise not presented for identification and authentication.

Moreover, Director Almazan was never presented to affirm the contents of his letters to Congress¹² and be subjected to cross-examination on his Judicial Affidavit This can also be extended to the Judicial Affidavit of Esmeraldo Ramos.¹³ As to the letter of Director Palad,¹⁴ the same was not properly identified by its author.

On this score, it is well-entrenched that the declarants of written statements pertaining to disputed facts must be presented at the trial for cross-examination, otherwise, they would be considered as hearsay.¹⁵ Even public documents need to be identified by the government official or authority who prepared them because they are not conclusive evidence with respect to the truthfulness of the statements made therein by the interested parties.¹⁶

Taguig asserts that Makati waived its right to object, that upon agreement of the parties, Taguig was allowed to submit as evidence the Judicial Affidavits and its attachments.¹⁷

However, Makati denies this because for its part, Makati understood that Taguig will present as witnesses, Mr. Ramos and

10 Exhibit "C"

11 Exhibit "GG-2"

12 Exhibits "M" and "N"

13 Exhibit "W"

14 Exhibit "T"

15 *Alba v. Court of Appeals*, G.R. No. 164041, July 29, 2005.

16 *Rivas v. Court of Appeals*, G.R. No. 94630, 14 June 1993.

17 Appellees' Brief, p. 61, Rollo, p. 308.

Director Almazan to testify on the matters contained in the affidavits and the attachments. Taguig's Pre-Trial Brief states:

“1. ESMERALDO RAMOS - the Asst. Municipal Assessor-OIC of Taguig - To testify on the matters contained in his affidavit, to identify the official ancient documents, titles, plans and maps which will establish that the Fort William McKinley (now Fort Bonifacio) including the seven (7) Military Barangays, are all within the territorial jurisdiction of the Municipality of Taguig - To testify on the wide-open spaces and farmlands with an area of about 74 hectares, which used to be occupied and cultivated by farmers from Taguig and Pateros since the time of their forefathers with the express permission of the Camp Officials. However, the officials of defendant Makati drove the farmers away and caused structures and other improvements to be constructed thereon to the detriment of the Taguig farmers.

2. ERIBERTO V. ALMAZAN, former Regional Technical Director of the Land Management Sector of the DENR/NCR, and/or his successor-in-office - To testify on matters contained in his affidavit; on the maps and plans certified to and issued by his office; to identify and explain his letters to Congressman DANTE O. TINGA and to the Chairman of the House Committee on Local Governments.”¹⁸

Precisely, Taguig stated that the affidavits will be attested on to affirm and confirm the contents thereof, to which Makati relied, hence, it is contrary to logic that Makati would waive its rights to cross-examine said witnesses. Withal, without affording Makati the

¹⁸ Records, Vol VII, p. 125.

chance to cross-examine said witnesses, Exhibits “W”¹⁹ and “X”²⁰ should not have been admitted for being hearsay, as well as the attached documents therein.

Further, We can apply by analogy the new rule on Judicial Affidavits which states that though affidavits take the place of direct testimonies it does not mean that the said affidavits will not be authenticated and cross-examined. As stated in A.M. No. 12-8-8 SC:

Sec. 2. Submission of Judicial Affidavits and Exhibits in lieu of direct testimonies. -

(a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, not later than five days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents, the following:

- (1) The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies;and
- (2) The parties' documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked as Exhibits A, B, C, and so on in the case of the complainant or the plaintiff, and as Exhibits 1, 2, 3, and so on in the case of the respondent or the defendant.

(b) Should a party or a witness desire to keep the original document or object evidence in his possession, he may, after the same has been identified, marked as exhibit, and authenticated, warrant in his judicial affidavit that the copy or reproduction attached to such affidavit is a

19 Affidavit of Esmeraldo Ramos.

20 Affidavit of Eriberto V. Almazan.

faithful copy or reproduction of that original. **In addition, the party or witness shall bring the original document or object evidence for comparison during the preliminary conference with the attached copy, reproduction, or pictures, failing which the latter shall not be admitted.** (emphasis supplied)

Sec. 6. Offer of and objections to testimony in judicial affidavit.- The party presenting the judicial affidavit of his witness in place of direct testimony shall state the purpose of such testimony at the start of the presentation of the witness. **The adverse party may move to disqualify the witness or to strike out his affidavit or any of the answers found in it on ground of inadmissibility.** The court shall promptly rule on the motion and, if granted, shall cause the marking of any excluded answer by placing it in brackets under the initials of an authorized court personnel, without prejudice to a tender of excluded evidence under Section 40 of Rule 132 of the Rules of Court.

Sec. 7. Examination of the witness on his judicial affidavit. - **The adverse party shall have the right to cross-examine the witness on his judicial affidavit and on the exhibits attached to the same.** The party who presents the witness may also examine him as on re-direct. **In every case, the court shall take active part in examining the witness to determine his credibility as well as the truth of his testimony and to elicit the answers that it needs for resolving the issues.** (emphasis supplied)

By and large, the lower court seriously erred in admitting said pieces of evidence, and worse, gave probative value to them despite

miserably failing the tests set under the rules of evidence and jurisprudence.

II. The lower court erred in declaring the disputed area as part of the territory of Taguig.

Even granting that Plan Psu-2031 is a correct mapping of the Hacienda Maricaban, We can deduce that:

1. The Hacienda Maricaban comprises of the cities of Taguig, Pasay, Parañaque, Pasig; and
2. Fort William McKinley lies at the northern portion of the Hacienda.

Taguig stresses that the Hacienda Maricaban does not adjoin Makati. This is rather a misleading statement because looking at the map, and based on the deduced facts above, San Pedro Macati adjoins the disputed area. In fact, in the Taguig's *Brief*, and We quote:

“5.7. According to the plan, lying at the Northern and Northwestern side of the Fort McKinley is Pasay (formerly Malibay) **as the Guadalupe Estate and the San Pedro de Macati Estate appear as located within the territory of Pasay.** Indeed, then and up to now no part of Parcel 4, Psu-2031 was or has ever been situated within the territory of Makati.”²¹
(emphasis supplied)

Based on the foregoing, Taguig readily admits that San Pedro Macati lies within what was formerly Pasay or formerly Malibay, and thus adjoins Fort William McKinley. Certainly, Taguig did not intend to highlight this proximity of Fort William McKinley to Makati. Instead, Taguig fervently emphasises that Fort Bonifacio is **mainly situated in Taguig.**

²¹ Appelllee's Brief, p. 32, Rollo, p. 272.

Which leads Us now to whether or not Fort Bonifacio is indeed situated in Taguig.

Evidence adduced by both parties relating to the sale of land by Dolores Pascual Casal to the U.S. Government on August 5, 1902 is undisputed. It is likewise uncontroverted that the land sold became Fort William McKinley or Fort Bonifacio. Taguig claims that in 1906, the Fort was expanded to cover the rest of the Hacienda Maricaban. Taguig posits that, that bigger tract of land became registered under the Torrens system of titling and was consequently covered by OCT No. 291.

However, as stated by Makati in its *Brief ad cautelam*, this OCT No. 291 was registered under the name of Dolores Pascual Casal and was issued on October 1, 1906 pursuant to Decree No. 1368 of the Court of Land Registration.²² This title was formally offered by Makati as evidence.

As correctly stated by the Makati in its Formal Offer of Evidence with Motion to Transfer Marking, and We quote:

24 to 24-B	Certified true copy of Original Certificate of Title (OCT) No. 291 consisting of three (3) pages	a. The registered title issued to Dolores Pascual Casal Y Ochoa dated 01 October 1906 pursuant to Decree No. 1368 of the Court of Land Registration.
24-C to 24-E	Stamped Certification of the Chief of the Vault Section of the Land Registration Authority, Mr.	b. The genuineness and authenticity of the documents. c. This document is an Original Certificate of Title (OCT). Contrary to Taguig's claim, this is not the

²² Appellant's Brief, p. 40, Rollo, p. 150.

	Eduardo Santos, on each page.	property acquired by the United States government mentioned in General Order No. 104 October 3rd 1902, which became Fort William McKinley Military Reservation (Taguig's Exh. "B") as Dolores Pascual Casal would not have been able to register this property in her name subsequently in 1906 under and original title (OCT). d. Also offered as part of the testimony of the defense witness, Eduardo Santos, Chief, Vault Section of the Docket Division of the Land Registration Authority (LRA). e. Also offered as part of the testimony of the defense witness, Geodetic Engineer Francisco Almeda, Jr.
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Verily, OCT No. 291 being issued in the name of Dolores Pascual Casal in 1906, could not have included the land formerly sold to the U.S. Government, which is said to be Fort William McKinley. Rather, We are convinced that OCT No. 291 only covers the tract of land that was subsequently acquired by the U.S. Government, falling under the jurisdiction of Taguig, Pasay and Parañaque.

Furthermore, Decreto No. 1368, offered in evidence by Makati, and OCT No. 291, through its technical descriptions was plotted by Geodetic Engr. Francisco Almeda, Jr. which shows that Fort William McKinley lies outside and to the North of the property registered to Dolores Pascual Casal under OCT No. 291.²³ It bears to point that this

²³ Exhibits "67" and "68".

sketch plan was certified by the DENR-NCR as to the correctness of the plotting of the map.²⁴ Furthermore, this sketch plan, coincides with the 3rd reference map obtained by Engr. Almeda, Jr. from the U.S. National Archives pertaining to the area of the proposed extension of Fort William McKinley.²⁵

Derivative titles of OCT No. 291 are TCT No. 1219, TCT No. 1688, TCT No. 2288 and TCT No. 61524 (registered under the name of the Republic of the Philippines). However, as even admitted by the lower court, these TCTs do not mention Parcel 4, which covers the disputed area. We quote from the decision:

“xxx. In 1908, the U.S. Government expanded the FORT. For that purpose, it occupied the rest of Hacienda Maricaban located in the municipalities of Taguig, Pasay, and Parañaque consisting of 2,574.35 hectares from the same owner. This bigger tract of land was already registered under the Torrens system as Original Certificate of Title No. 291. With each acquisition, the title to the land was transferred to the United States of America per Transfer Certificate of Title No. 1219 (Exh. “GG”).

xxxx.

*Approved plans and titles and relevant documents overwhelmingly point to Taguig as the situs of the FORT. Transfer Certificate of Title No. 61524 covering **Parcel 3**, psu-2031 indicates the land covered thereby is situated in Taguig (Exh. “F”). xxx.*

24 Exhibit “68-A” and “68-B”

25 Exhibit “64” and submarkings.

*The authenticated copy of the records of the National Archives of the United States, Washington, D.C., U.S.A. Attesting to the purchase of land known as Maricaban Estate as situated in the townships of Taguig, Parañaque and Pasay (Exh. "EE"). Exhibit "GG" - Copia Del Decreto No. 1368 or Decree No. 1368 in the name of Dolores Pascual states that the parcels of land covered thereby, **Parcels 1, 2 and 3** are situated in the Municipalities of Taguig, Parañaque and Pasay. Transfer Certificate of Title No. 1688 of the Registry of Deeds for Rizal issued in the name of the United States covering **Parcels 1, 2 and 3, Psu-2031 (Hacienda Maricaban)** are located in the Municipalities of Taguig, Parañaque and Pasay (Exh. "GG-2").*

*The Petition dated July 23, 1995 filed by the Director of Lands Zoilo Castrillo in LRC Case No. 2484, CFI, Pasig, Rizal (Exh. "GG-1") states that TCT No. 2288 had been issued in the name of the United States **covering three (3) parcels of land (Parcels 1, 2 and 3, Psu-2031)** which are parts of Hacienda Maricaban."²⁶ (emphasis supplied)*

Nowhere in said derivative titles and decree was the disputed area, Parcel 4, Psu-2031, mentioned. The descriptions above on the derivative titles coincide with the evidence presented by Makati and its claim that Fort William McKinley lies **outside** the tract of land claimed by Taguig to be **situated in Taguig, Pasay and Parañaque.**

More telling is that even prior to the filing of the Complaint by Taguig in 1993, Presidential Proclamation Nos. 2475 and 518 recognized that the EMBO Barangays (portion of Parcel 4, Psu-2031), are in fact within Makati's jurisdiction.

²⁶ July 8, 2011 Decision, pp. 12 and 17-18.

As for OCT SP-001²⁷ issued on February 10, 1995 by the President Fidel V. Ramos through Special Patents 3595 and 3596, conveying ownership over a considerable portion of Fort Bonifacio to FBDC, which indicates Taguig as the location of Fort Bonifacio, the trace-back for its sources were plans Swo-00-001265²⁸ and Swo-00-001266.²⁹ Upon closer examination, one can see that the location of Fort Bonifacio in said plans was indicated as Makati/Taguig, but the word "Makati" was crossed out. This crossing-out is highly irregular. As testified on by Engineer Ignacio Almira, Jr., Chief of Geodetic Surveys Division of the DENR-NCR,³⁰ the basis of the correction, the name of the person who authorized the correction, the date of the correction and a notation of "*additional information after the date of approval*" should have been indicated in the box provided at the bottom right portion of the plans.

However, those indicators were absent in both plans Swo-00-001265 and Swo-00-001266, hence OCT SP-001 cannot be relied upon by Taguig to buttress its claim over the disputed party. If ever, it even fortifies the claim of Makati since the source plans originally states the name of Makati until was unjustifiably and unceremoniously crossed-out in violation of the established rules and of Makati's right to due process.

Inasmuch as Taguig questions Proclamation No. 2475 and Proclamation No. 518, it appears that both proclamations are even more likely impartial since they were promulgated prior to the institution of the instant case. The special patents, on the other hand have been issued during the course of the trial of the instant case, which could suggest that they were made to specifically favor Taguig.

27 Exhibit "CC"

28 Exhibit "7"

29 Exhibit "8"

30 TSN dated December 17, 2010, pp. 21-23.

III. The lower court erred in declaring Presidential Proclamation No. 2475 and Presidential Proclamation No. 418 as unconstitutional and invalid.

The assailed decision stated that both proclamations altered municipal boundaries and transferred subject areas from the plaintiff Taguig to defendant Makati without the benefit of plebiscites, violating Section 10, Article X of the 1987 Constitution.³¹

Yet, census since 1970 of the seven (7) military barangays indicate that they were under the jurisdiction of Makati.³² And that in fact, residents there were voting in the national and local elections as Makati voters.³³ **Hence, Presidential Proclamation Nos. 2475 and 518 did not “alter” boundaries but instead confirmed that said area is under the jurisdiction of Makati.**

Taguig in its *Brief* claims that these barangays were not legally created under Section 3 of Republic Act No. 3590 otherwise known as the “Revised Barrio Charter” which took effect on 22 June 1963. What Taguig deliberately failed to mention was that the EMBO barangays, as well as the Inner Fort barangays were already in existence prior to Republic Act No. 3590. Thus, these barangays, automatically came under the provisions of RA No. 3590 without need of having to be recreated under that law.³⁴

31 Section 10. No province, city, municipality, or barangay may be created, divided, merged, abolished, or its boundary substantially altered, except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected.

32 Exhibit “32” with submarkings.

33 Exhibits “6”, “13” and “27”.

34 Section 2 of RA No. 3590. -

xxxx.

All barrios existing at the time of the approval of this amendatory Act come under the provisions hereof including poblaciones which, on December thirty-first, nineteen hundred and sixty-two, were already elected and organized their respective barrio councils: *Provided*, That in the latter case, such poblaciones are given a period of six months from and after the approval of this amendatory Act within which to complete their organization into barrios, in accordance with section three hereof, otherwise

Furthermore, as stated above, there is a great deal of close proximity with the San Pedro Macati and the northern portion of Hacienda Maricaban, Parcel 4, Psu-2031. In fact, Parcel 4 is adjacent to Makati and Pasig. Hence, proximity-wise, Makati's claim is more credible than that of Taguig's.

At any rate, Proclamation 2475 was enacted by then President Ferdinand Marcos in 1986 while Proclamation 518 was created by then President Corazon Aquino in 1990, however, it took Taguig until 1993, when the proposed cityhood of Makati was being debated in Congress, to file the instant Complaint. On this note the Supreme Court has held that *"considerable delay in asserting one's right before a court of justice is strongly persuasive of the lack of merit of his claim, since it is human nature for a person to enforce his right when same is threatened or invaded xxx"*.³⁵

In fine, by upholding the validity of Proclamations 2475 and 518, the claim of Makati over the disputed area becomes undisputed, hence, necessarily, the claim of Taguig must fail.

With the above decision, the preliminary injunction issued by the lower court against Makati dated 15 July 1994 is hereby lifted as a matter of course.

WHEREFORE, premises considered, this Court **GRANTS** the instant appeal, **REVERSES** and **SETS ASIDE** the assailed decision and order rendered by the Regional Trial Court of Pasig City, Branch 153 dated 08 July 2011 and 19 December 2011 respectively and **RENDERS** a new Decision as follows:

they shall be excluded from the provisions of this Act.
xxxx."

35 Catholic Bishop of Balanga v. Court of Appeals, G.R. No. 112519, November 14 1996.

- 1) Dismissing the Complaint of Taguig for lack of merit and confirming that the Disputed Area comprising of the EMBO Barangays and Inner Fort Barangays (Barangay Post Proper Northside and Barangay Post Proper Southside) in Fort Bonifacio are within the territorial jurisdiction of Makati City;
- 2) Lifting the injunction issued by the lower court against Makati;
- 3) Declaring Presidential Proclamation No. 2475 and Proclamation No. 518 as constitutional and valid;
- 4) Ordering Taguig to immediately cease and desist from exercising jurisdiction within the disputed area and return the same to Makati; and
- 5) Ordering Taguig to pay the cost of suit.

SO ORDERED.

MARLENE GONZALES-SISON
Associate Justice

WE CONCUR:

HAKIM S. ABDULWAHID
Associate Justice

EDWIN D. SORONGON
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

HAKIM S. ABDULWAHID
Chairperson, Sixth (6th) Division