

22/02/1997

Manila should list properties foreigners cannot buy

Ghazali Shafie

I refer to Datuk A Kadir Jasin's Other Thots column (NST, Feb 16, 1997) which I read with a great deal of interest.

The Renong/Manila Hotel case as decided by the Philippines Supreme Court is indeed a hot topic among investors and would-be investors in support of the Philippines Government's policy of privatisation and deregulation.

Both Prime Minister Datuk Seri Dr Mahathir Mohamad and Philippine President Fidel Ramos have found it necessary to comment about the chilling effect of the Supreme Court decision.

Mahathir and Ramos are great friends. When the President visited Kuala Lumpur, they both discussed about the lethargy of investments in the Philippines by foreign and local investors alike.

Dr Mahathir, a great believer in South South co-operation, particularly among Asean members, assured Ramos that he would take steps to encourage Malaysian investors to venture into the Philippines.

Ramos also spoke with me on the same subject at a dinner given by Dr Mahathir. I promised him to do whatever I could.

I have known Ramos for a very long time; in fact I have often listened intently to his father's advice when the senior Ramos was the Philippine Ambassador in India and I was working to get India's sympathy and support for our independence struggle in the mid-Fifties.

In the Sixties, Ramos, who was then a military and constabulary officer of the Republic, and I went through the difficult days of Sukarno's confrontation and together we contributed in our own little ways towards the return of the happy and cordial relationship between the three Malay peoples separated politically and cartographically by western colonialism.

As a result of the President's visit to Kuala Lumpur and the Prime Minister's encouragement, capital began to flow from Malaysia to serve inter alia as catalyst for foreign and local capital into the Philippines.

Malaysian investors were continuously reminded that a meaningful investment was to be in the form of transfer of funds and not simply to introduce a project with finance raised locally.

It was a matter of great pleasure when the President of the Philippine Congress found an occasion to declare publicly that Malaysian investors had brought in the most funds.

When things began to look up, it was to be expected that envy would also emerge not only among foreigners vying with each other but also that local nationalism would begin to sprout.

In my discussions with Malaysian investors, I have often reminded them of this very point so that they would tread carefully and would not appear so haughty as to make the investor appear like an ugly Malaysian.

Investments are not acts of charity and capitalism, foreign or local alike, has not lost its philosophy of maximisation of profit, even if egalitarian principles are involved.

They naturally follow the stream with the most profits and least impediments. They need clear guidelines and transparent policies which do not veer midstream.

The Prime Minister's comments on this case are in no way to discourage Malaysians from investing in the Philippines; Malaysians still feel very upbeat towards the Republic.

Renong is a huge public listed company, a creature of the Economic Policy, always attentive to the Malaysian Government's guidance and

naturally above suspicion in harbouring any exploitative intent.

It is native-based and perhaps, rightly or wrongly, does not regard itself as a foreigner in a country like the Philippines, which is also a member of Asean.

Renong had entered the Philippines having noted and agreed with Dr Mahathir in his Malaysian-Philippines relationship.

It must have jolted them to the core when a lower court passed the judgment against them, hence the appeal to the Supreme Court.

It would appear to me that both the lower court and the Supreme Court had based their views and judgment in accordance with a Constitutional Clause which came into being in the paradigm of the Cold War and the wave of nationalism.

In the absence of an Executive guideline or a list of propositions subjected to the relevant Constitutional Clause, the courts have taken upon themselves to declare the Manila Hotel as a national heritage.

Taken superficially, it would appear that the Supreme Court had made a judicial legislation as if it is usurping the powers of the Congress or the Executive authority so as to render "bidding a ridiculous sham", as a learned judge put it.

All these faux pas would not have arisen if the Executive branch of the Government or the Congress had decided on a list of properties which would be governed by the Constitutional Clause when the offer for bidding was made.

Renong too would not have incurred the costs of preparing the tender bid and litigation.

This case has been blown out of proportion, much to the delight of those who do not wish to see the Philippines crawl out of its economic morass and to wish ill of the happy relationship subsisting between Malaysia and the Philippines.

One of the chilling effects of this case is that it provides more ammunition for the ill-wishers to condemn the Philippines as a bad investment locale.

If Renong could be recompensed without prejudice ex gratia for its bidding and litigation costs, since it made the bid bona fide and not frivolously or maliciously, then the whole incident could be no more than a hiccup in the process of privatisation, which admittedly is something quite novel in the Philippines and indeed in much of the Third World.

There is no need to amend the Philippine Constitution as suggested by some as this may open the Pandora's Box.

To me it would be sufficient to have an ad hoc commission appointed to propose a list for the Executive authority or the Congress to declare which properties are subject to the Constitutional Clause.

The Commission should not comprise only of judges but also renowned politicians like former President Macapagal, besides cultural and intellectual luminaries from all over the Philippines. Even now the Executive authority could still re-offer for general sale or otherwise the Manila Hotel according to its declared status.

It was here that General Douglas MacArthur once had his headquarters, the symbol of US imperialism in Asia, and where Tunku Abdul Rahman and Sukarno stayed during a tripartite meeting with President Macapagal.

As a symbol of anti-colonialism itself, it should not be privatised. So are some sites in Malolos.

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