REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

NATIONAL FOOD AUTHORITY, Represented by MA. THERESA S. VILLAFUERTE, in her capacity as Director of NFA Legal Affairs Department, Petitioner,	**CTA EB NO. 1587 (CTA AC NO. 169)**
-versus-	Present: Del Rosario, *P.J.*, Castañeda, Jr., Bautista, Uy, Casanova, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
CITY GOVERNMENT OF KIDAPAWAN; CITY TREASURER OF KIDAPAWAN, Respondents.	**Promulgated:** NOV 23 2017 2:39 p.m.

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RESOLUTION

CASTAÑEDA, JR., *J.*:

This resolves petitioner's "Motion for Reconsideration"[1] of the June 5, 2017 Resolution, which was filed on July 3, 2017.

The dispositive portion of the Resolution dated June 5, 2017 states:

> **WHEREFORE,** for lack of jurisdiction, petitioner's "Petition for Review (under Rule 8 of A.M. No. 05-11-07-

[1] *Rollo*, pp. 301-325.

CTA) with Motion for Suspension of Collection of Tax" filed on February 7, 2017 is **DISMISSED.**

SO ORDERED.

In its motion, petitioner argues that petitioner already assailed the validity of the auction sale conducted by respondent when NFA filed a Petition for Prohibition before the Regional Trial Court; that the filing of a Petition for Certiorari before the CTA was the appropriate remedy for NFA; that the Honorable Court is not precluded from treating NFA's Petition for Certiorari as an ordinary appeal; and that the Honorable Court should rule upon the errors of judgment raised by petitioner in its claim that it is a government instrumentality and not a GOCC.

On August 24, 2017, respondent City Government of Kidapawan (respondent) filed its "Opposition"[2]. In its Opposition, respondent City Government of Kidapawan (respondent) states that petitioner failed to comply with Sections 5[3] and 6[4] of Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA). Respondent also argues that the motion for reconsideration is not supported by any affidavits of merits or affidavit of witnesses, as the case may be. Also, respondent argues that the motion merely rehashes the issues previously put forward, and the Court already passed upon those issues.

Petitioner's motion was submitted for resolution on August 30, 2017. *gc*

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[2] *Id.*, pp. 329-330.

[3] SEC. 5. *Grounds of motion for new trial.* — A motion for new trial may be based on one or more of the following causes materially affecting the substantial rights of the movant:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which the rights of such aggrieved party has probably been impaired in his rights; or *(a)*

(b) Newly discovered evidence, which the party could not, with reasonable diligence, have discovered and produced at the trial and, which, if presented, would probably alter the result. *(a)*

A motion for new trial shall include all grounds then available and those not included shall be deemed waived.*(Rules of Court, Rule 37, sec. 1a)*

[4] SEC. 6. *Contents of motion for reconsideration or new trial and notice.* — The motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in subparagraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in subparagraph (b) of the preceding section shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration or new trial that does not comply with the foregoing provisions shall be deemed *pro forma*, which shall not toll the reglementary period for appeal. *(Rules of Court, Rule 37, sec. 2a)*

Respondent's "Supplemental Opposition" filed *via* LBC and received by this Court on October 27, 2017 is **NOTED.** Respondent alleges the following:

> The original and notarized Certificates of Redemption of Sold Real Property Thru Public Auction issued by the Office of the Treasurer, City of Kidapawan, North Cotabato on October 4, 2017 hereto attached as Annexes "A-1" to "A-19" are hereby submitted in support to the prayer of respondents to deny the motion outright.
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> With the act of redeeming the properties of NFA, the instant case is already moot and academic.

At the outset, this Court finds no merit to respondent's Opposition that petitioner failed to comply with Sections 5 and 6 of Rule 15 of RRCTA. A plain reading of Sec. 5 of RRCTA shows that it pertains to filing a motion for new trial. In the instant case, petitioner filed a motion for reconsideration. Thus, Sec. 5 of Rule 15 of RRCTA does not apply. Anent Sec. 6 of Rule 15 of RRCTA, it was complied with by petitioner *i.e.* "[t]he motion shall be in writing stating its grounds, a written notice of which shall be served by the movant on the adverse party."

With respect to the grounds raised by petitioner in its motion, this Court finds no valid or cogent reason to deviate from our findings and conclusions reached in the June 5, 2017 Resolution, thus, the motion is denied.

It is emphasized that the public auction proceeded on October 6, 2016 and the properties were sold by the City of Kidapawan. In this case, CTA has only appellate jurisdiction and no original jurisdiction.

We reiterate that in the consolidated cases of *City of Lapu-Lapu v. Philippine Economic Zone Authority*[5] and *Province of Bataan v. Philippine Economic Zone Authority,*[6] *(City of Lapu-Lapu case)* the Supreme Court (SC) categorically stated that, the "remedy of a taxpayer **depends on the stage** in which the local government unit is enforcing its authority to collect real property taxes"; and that **"[i]n case the local government unit has already sold the property at public auction, the taxpayer must first deposit with the court the amount for which the real property was sold, together with interest of 2% per month from the date of sale to the time of the institution of action. The taxpayer may then file a complaint to assail the validity of the public auction. The decisions of the Regional**

[5] G.R. No. 184203, November 26, 2014.
[6] G.R. No. 187583, November 26, 2014.

Trial Court in these cases shall be appealable before the Court of Tax Appeals, and the latter's decisions appealable before this court through a petition for review on certiorari under Rule 45 of the Rules of Court."

At this juncture, this Court reiterates pertinent portions of the assailed June 5, 2017 Resolution, as follows:

> "Applying the ruling in the *City of Lapu-Lapu* case *(supra)*, the CTA has only appellate jurisdiction and no original jurisdiction in cases where the local government in enforcing its authority to collect the tax has already sold the real property at public auction. Considering that during the pendency of the case in the CTA 3rd Division, the respondent City Government of Kidapawan had already auctioned the real properties of petitioner on October 6, 2016, this petition, therefore, must be dismissed because of this Court's lack of jurisdiction.
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> Moreover, the *City of Lapu-Lapu* case *(supra)* also states that the "party unsatisfied with the decision of the Regional Trial Court shall file an appeal, not a petition for certiorari, before the Court of Tax Appeals, the complaint being a local tax case decided by the Regional Trial Court." It is emphasized that in the CTA 3rd Division, petitioner filed a "Petition for Certiorari (under Rule 65 of the Rules of Court) with Prayer for TRO and/or Writ of Preliminary Injunction" seeking to reverse and set aside the Order dated 29 April 2016 of the Regional Trial Court Branch 23, Kidapawan City, denying petitioner's Motion for Reconsideration of the Decision dated 20 August 2015. Applying the pronouncement of the Supreme Court in the *City of Lapu-Lapu* case *(supra),* indeed petitioner sought a wrong remedy in the CTA 3rd Division."

WHEREFORE, premises considered, petitioner's Motion for Reconsideration on the Resolution dated June 5, 2017 is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(I reiterate my Separate Concurring Opinion.)
ROMAN G. DEL ROSARIO
Presiding Justice

(I humbly maintain my Concurring Opinion.)
LOVELL R. BAUTISTA
Associate Justice

(On Leave)
ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(On Leave)
CATHERINE T. MANAHAN
Associate Justice