

Title: Boracay Foundation, Inc. vs. The Province of Aklan, Philippine Reclamation Authority, and DENR-EMB (Region VI), G.R. No. 199998, June 26, 2012

FACTS:

Boracay Foundation, Inc. (BFI) filed a petition to the Supreme Court of the Philippines seeking the issuance of an Environmental Protection Order and Writ of Continuing Mandamus against the Province of Aklan, represented by Governor Carlito S. Marquez, the Philippine Reclamation Authority (PRA), and the Department of Environment and Natural Resources - Environmental Management Bureau Region VI (DENR-EMB RVI). BFI's main concern was the adverse environmental impact of the reclamation project entitled "Marina Project," initiated by the Province of Aklan in Barangay Caticlan, which they believe would affect Boracay Island.

1. The Province of Aklan, intending to undertake the expansion of the Caticlan Jetty Port, which involved the construction of commercial facilities and reclamation of land, sought to reclaim approximately 2.64 hectares of foreshore land.
2. In April 2009, the provincial government conducted a feasibility study and-related activities securing the necessary Environmental Compliance Certificate (ECC) from the DENR-EMB RVI.
3. The ECC was issued for Phase 1 on April 27, 2010, covering the initial 2.64 hectares; this process was challenged by BFI citing lack of proper public consultation and environmental impact assessment specific to the entire project scale.
4. During various public consultations starting June 2010, objections were raised by local government units, particularly the Sangguniang Bayan of Malay, and non-governmental organizations, including BFI.
5. Subsequently, the Province of Aklan moved forward with the project and entered a Memorandum of Agreement (MOA) with PRA approved by PRA Board Resolution No. 4094 on May 17, 2010.
6. On June 1, 2011, BFI filed the petition, resulting in the Supreme Court issuing a Temporary Environmental Protection Order (TEPO) on June 7, 2011, thus halting the project's progress.
7. On September 8, 2011, the province motioned for the dismissal of the petition, citing that the intended future phases of the project (totaling 40 hectares) were no longer pursued, making the issues moot.

ISSUES:

1. Whether the petition should be dismissed for being moot and academic.

2. Whether the petition was premature for BFI's failure to exhaust administrative remedies.
3. Whether the Province of Aklan failed to perform a full Environmental Impact Assessment (EIA).
4. Whether the Province of Aklan complied with all relevant legal requirements, including those under the pertinent laws and regulations, particularly environmental laws.
5. Whether there was proper, timely, and sufficient public consultation as required by law for the project.

COURT'S DECISION:

The Supreme Court partially granted the petition by converting the TEPO to a Writ of Continuing Mandamus and directed the DENR-EMB RVI to revisit and review the classification and environmental impact of the project. The Court also mandated stringent conditions for the continuation of the reclamation project to ensure compliance with legal requirements.

1. **Mootness:** The Court ruled that the petition has not been rendered moot even if the project area was officially limited to 2.64 hectares. Questions regarding compliance with environmental regulations continued to hold importance and require evaluation.
2. **Prematurity and Administrative Remedies:** The Court held that BFI did not need to exhaust administrative remedies because it was not a party to the proceedings before DENR-EMB RVI where the ECC was issued.
3. **Full EIA:** The Supreme Court ordered the DENR-EMB RVI to review and re-evaluate the adequacy of the EIA performed, specifically regarding whether the classification of the project was appropriate and whether a comprehensive impact assessment was done.
4. **Legal Compliance:** The Province of Aklan had procedural lapses, particularly in terms of public consultations and securing necessary approvals from local government units before starting the project.
5. **Public Consultation:** The Court found the efforts by the Province of Aklan insufficient and late. Proper public consultations and prior approval from local units, mandated by sections of the Local Government Code, were required and not adequately conducted.

DOCTRINE:

The case reiterates that significant reclamation projects that potentially impact ecologically sensitive areas must comply with stringent environmental regulations, including an accurate and thorough Environmental Impact Assessment, and must secure prior approvals and consultative endorsements from concerned local government units as mandated by law. This decision emphasizes the primacy of public consultation in the implementation of projects

impacting environmental and ecological balance.

CLASS NOTES:

****Key Legal Aspects:****

1. ****Environmental Compliance Certificate (ECC):**** Obtained from DENR-EMB after an Environmental Impact Assessment (EIA) for projects impacting the environment.
2. ****Public Consultation:**** Required under the Local Government Code, as per Sections 26 and 27, particularly applied to projects with significant environmental impact.
3. ****Local Government Code (LGC):**** Mandates LGUs' active role in maintaining ecological balance and requires prior LGU approval for potentially harmful projects.

****Critical Legal Provisions:****

1. ****Presidential Decree No. 1586 (PD 1586):**** Establishing the Environmental Impact Statement System.
2. ****Republic Act No. 7160 (R.A. 7160) - Local Government Code:**** Sections 26 and 27 emphasize the necessity of consultation and prior approval from local bodies.
3. ****Republic Act No. 9593 (Tourism Act of 2009):****

HISTORICAL BACKGROUND:

Boracay Island is one of the top tourist destinations in the Philippines, renowned for its unique white-sand beaches. Efforts to develop its vicinity, such as the Caticlan Jetty Port's expansion, are critical to supporting tourism but pose sustainability challenges. Hence, this case highlights the balance between economic development aspirations and environmental stewardship, embodying broader historical tension between progress and conservation in the Philippines.