

**THE CITY GOVERNMENT OF BAGUIO CITY, REPRESENTED BY
MAURICIO G. DOMOGAN, CITY MAYOR; ANTI-SQUATTING AND
ANTI-ILLEGAL STRUCTURE COMMITTEE, REPRESENTED BY ATTY.
CARLOS M. CANILAO; ...**

Ponente: CORALES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0c035872477d/>

CORALES, J.:

This is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing the January 24, 2011[2] and the June 5, 2012[3] Resolutions of the National Commission on Indigenous People-CAR (NCIP-CAR) in NCIP CASE No. 05-CAR-10. The first assailed Resolution granted private respondent Asuncion Nimer's (Nimer) application for issuance of a writ of preliminary injunction against the enforcement of Demolition Order No.11 Series of 2009 while the second Resolution denied petitioner's motion for reconsideration.

The Antecedents

Nimer constructed a bungalow structure and two (2) flat forms for commercial plantings near the alley of Casa Vallejo Building, Upper Session Road, Baguio City. Upon the letter of one Nathaniel Cruz (Cruz), the City Government of Baguio (City Government) conducted an ocular inspection on the premises and found that Nimer's structures are not covered by any building permit.[4] Following the recommendation of the Anti-Squatting and Anti-Illegal Structures Committee (ASAISC),[5] the Office of the City Mayor through the City Administrator issued on July 30, 2008 Notice of Demolition No. 30, Series of 2008[6] requiring Nimer to submit evidence to justify her construction or to voluntarily remove the structures within ten (10) days. As shown by the Public Order and Safety Division's (POSD) report[7] dated September 2, 2008 and the May 16, 2009 letter[8] of the Baguio Centennial Commission, Nimer failed to comply with the foregoing directives prompting the City Government to issue on September 16, 2009 Demolition Order No. 11 Series of 2009[9]. On November 10, 2009, the City Demolition Team notified Nimer of the scheduled enforcement of the demolition order on February 16, 2010.[10]

On February 15, 2010, Nimer filed before NCIP-CAR a complaint[11] for enforcement of rights over ancestral land and injunction with prayer for issuance of temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) against the Office of the City Mayor, the City Administrator, City Building and Architecture, ASAISC, POSD, City Demolition Team and Cruz (collectively referred herein as petitioners). She alleged that her structures are found in the ancestral land of Richard Acop (Acop), one of the heirs of Cosen Piraso and Sixto Acop who were descendants of the early Ibaloi settlers in Baguio City and has a pending petition for identification, delineation and recognition of ancestral land before the NCIP. According to Nimer, her parents, Juanita Saga-oc and Rafael Nimer, were the caretakers of the ancestral land and thereafter made part-owners by the ancestors of Acop. The portion inherited by her parents was passed to her by virtue of the waiver of rights[12] executed by her mother in her favor including an old structure which she renovated and declared for tax purposes.

On that same day, the NCIP-CAR issued a resolution[13] granting Nimer's prayer for the issuance of TRO.

Petitioners filed their Answer[14] arguing that Nimer has no legal right that could be protected by a writ of

injunction because she is only capitalizing on the application of Acop who is not her relative by affinity or consanguinity. They also questioned the jurisdiction of NCIP-CAR contending that Nimer is not a member of the Indigenous People of Baguio because she has not been issued any Certification of Confirmation from the NCIP-Baguio Office.

On November 10, 2010, the NCIP issued a Certificate of Ancestral Land Title (CALT) to the Heirs of Cosen Piraso represented by Acop and the same was registered with the Registry of Deeds on December 8, 2010 under Original Certificate of Title No. 0-CALT-129. (OCT CALT-129)[15] The land covered by the CALT had been subdivided into lots in accordance with the subdivision lot approved by the Ancestral Domains Office and OCT CALT-129 has been cancelled. Among those included in the partition was Manuel Nimer married to Juanita S. Nimer who subsequently registered his portion thereof under Transfer Certificate of Title (TCT) No. 018-2010002858.[16]

The NCIP-CAR Ruling

On January 24, 2011, the NCIP-CAR issued the assailed Resolution[17] granting Nimer's prayer for WPI based on the following ratiocination:

xxx Indigenous Peoples are the offsprings and heirs of the peoples who have first inhabited and cared for the land long before any central government was established, their ancestors had territories over which they ruled themselves and related with other tribes . . . Their existence as indigenous peoples is manifested in their own lives through political, economic, socio-cultural and spiritual practices. The Indigenous Peoples' culture is the living and irrefutable proof to this. In the Cordillera, we have Apayao, Kalinga, Etnag, Etneg, Tingguian, Bago, Applai, Bontoc, Ifugao, Ibaloi, Kalanguya, Kankanaey, Owak and Karao.

From the foregoing, the issuance of a certificate of confirmation (COC) is not a requirement for an IP to secure before he can be considered as a member of an indigenous cultural community.

The petitioner's claim of ownership of the ancestral land subject hereof, just as her predecessor-in-interest maintain, is by virtue of native title and not ownership by acquisitive prescription. When indigenous peoples assert that a certain land is their ancestral land, there is legal presumption that they have a native title over said land. The law so states, thus:

xxx

Anent the allegation of public respondents that petitioner's structure should be demolished for being illegally constructed as it is without the requisite building permit, it is ruled herein that the petitioner is entitled to the protection of her right over her ancestral land as mandated by the 1987 Philippine Constitution. Section 5, Article XII of the Constitution provides: "The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being." xxx The enabling law of this constitutional guarantee is Republic Act No. 8371 and we must implement the law so that ICCs/IPs will realize their rights guaranteed by the Constitution. To demolish petitioner's structure for failure to show a building permit would result to the continuation of injustice to ICCs/IPs.

WHEREFORE, premises considered, the application for the issuance of a writ for preliminary injunction is hereby granted upon petitioner's filing of injunctive bond in the amount of One Hundred Thousand Pesos (P100,000.00).

So ordered[.]

Petitioners moved for reconsideration[18] reiterating their argument that the minimum legal requisites for the issuance of a preliminary prohibitory injunction have not been satisfied considering that Nimer's right over the

property is not clear and unmistakable. They also moved for the substitution of individual respondents in the case below who were impleaded in their official capacities as Mayor, City Administrator, Chairman of ASAISC, and head of POSD.

The NCIP-CAR denied the motion for reconsideration through its June 5, 2012 Resolution[19] and held that with the issuance of CALT covering the subject property where Nimer is one of the beneficiaries and the inclusion of her structures in the ancestral land, she already had a right to be protected by an injunctive writ otherwise, she will suffer grave and irreparable damage or injury. However, the NCIP-CAR granted the motion for substitution of parties.

Unfazed, petitioners filed the instant petition for certiorari premised on the following grounds:

I.

RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PRIVATE RESPONDENT IS A MEMBER OF THE INDIGENOUS PEOPLE OF BAGUIO CITY AND THAT SHE HAS A VALID ANCESTRAL LAND CLAIM.

II.

RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN GRANTING THE PRAYER FOR THE ISSUANCE OF TEMPORARY RESTRAINING ORDER AND WRIT OF PRELIMINARY INJUNCTION.[20]

This Court's Ruling

The petition lacks merit.

Injunction is a preservative remedy aimed at no other purpose than to protect the complainant's substantive rights and interests during the pendency of the principal action. A preliminary injunction, as the term itself suggests, is merely temporary. It is to be resorted to only when there is a pressing necessity to avoid injurious consequences that cannot be remedied under any standard of compensation.[21] It is proper only when the plaintiff appears to be entitled to the relief demanded in the complaint. Thus, a WPI will be issued only upon showing that (1) the right to be protected exists prima facie, (2) the acts sought to be enjoined are violative of that right; and (3) the violation sought to be prevented would cause an irreparable injustice.[22]

The power of the NCIP to issue TRO and WPI had long been settled in the case of *The City Government of Baguio City v. Atty. Brain Masweng, et al.*[23] but it was clarified that these preventive remedies are proper only if the main action is for injunction such as the case at bar. Although Nimer's complaint was designated as one for enforcement of rights over ancestral land, the allegations therein clearly set an action for injunction. In essence, Nimer averred that she has a right over the land which would be violated if the demolition order would be implemented. In fact, the reliefs sought by Nimer are intended for the preservation of the subject structures and not for any other purpose.

It is also a well-settled rule that the grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court or quasi-judicial body taking cognizance of the case. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion.[24]

Grave abuse of discretion in the issuance of writ of preliminary injunction implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner

by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[25]

Guided by the foregoing principles, this Court finds no reason to interfere with the order of the NCIP-CAR. No grave abuse of discretion could be attributed to it in granting a WPI in favor of Nimer because all of the elements for its issuance are present.

Petitioners argue that Nimer has no clear right which must be protected by a writ of injunction because her alleged right to the land where the subject structures are built is a mere expectation. They insist that at the time of the issuance of the WPI, there was yet no title issued in the name of Nimer's parents. They also invoked the pronouncement in *The City Government of Baguio City v. Atty. Brain Masweng, et al.*[26] where the Supreme Court held:

Proclamation No. 15, however, does not appear to be a definitive recognition of private respondents' ancestral land claim. The proclamation merely identifies the Molintas and Gumangan families, the predecessors-in-interest of private respondents, as claimants of a portion of the Busol Forest Reservation but does not acknowledge vested right over the same. In fact, Proclamation No. 15 explicitly withdraws the Busol Forest Reservation from sale or settlement xxx

All told, although the NCIP has the authority to issue temporary restraining order and writs of injunction, we are not convinced that private respondents are entitled to the relief granted by the Commission.

We are not persuaded.

First, *The City Government of Baguio* case is not in all fours with the case at bench. In that case, there was no evidence showing that the applicant's claim over the ancestral land has been recognized by Proclamation No. 15 and the area being claimed was part of a forest reservation which has been withdrawn from sale or settlement. The Supreme Court emphasized therein that the Busol Forest Reservation has already been declared inalienable and as such, it cannot be converted into private property. In contrast with this case, there is no showing that the land where Nimer's structures were built is part of any reservation or that there has been a prior land right recognized or acquired through any process before the effectivity of the Indigenous Peoples Right Act (IPRA).

Second, the records clearly show that the January 24, 2011 Resolution of the NCIP-CAR granting the injunctive relief in favor of Nimer was issued after the issuance of a CALT in favor of the Heirs of Cosen Piraso on November 10, 2010. Thus, the claim of Cosen Piraso as represented by Acop and his beneficiaries has already been recognized by the NCIP by the issuance of the CALT. Manuel Nimer married to Juanita, Nimer's mother, is one of the recognized beneficiaries of the Heirs of Cosen Piraso; was included in the partition of the ancestral land as approved by the NCIP; and is now the holder of TCT No. 018-2010002858. Notably, Juanita executed a waiver of right in favor of Nimer. These documents remain valid until otherwise annulled or repudiated. Accordingly, Nimer's right is not a mere expectation but a present and unmistakable right that exists at the time of the grant of the provisional remedy of injunction. It bears stressing that while a clear showing of the right is necessary, its existence need not be conclusively established. In fact, the evidence required to justify the issuance of a WPI in the hearing thereon need not be conclusive or complete. The evidence need only be a "sampling" intended merely to give the court an idea of the justification for the preliminary injunction, pending the decision of the case on the merits.[27]

With the foregoing, this Court finds no excessive exercise of discretion by the NCIP-CAR. We also agree with its ruling that the issuance of a Certificate of Confirmation is not a condition sine qua non for one to be considered a member of Indigenous People of Baguio City. Nothing in the provisions of the IPRA and its IRR requires a Certification of Confirmation for a person to qualify as a member of an Indigenous Cultural Community (ICCs) or

an Indigenous People (IPs). Part 1 section 2 (c) of the IRR of IPRA only states that the recognized registered leaders of ICCs/IPs are authorized to issue certificates of tribal membership to their members which shall be confirmed by the NCIP based on its census and records and shall serve only the purpose for which it was issued. Thus, while a Certification of Confirmation from the NCIP may bolster an individual's claim that he/she is an IP or a member of an ICC, the absence thereof does not necessarily imply the opposite as the law recognizes the identity of ICCs/IPs by mere self-ascription and ascription by others.

However, it must be clarified that Our disquisition herein applies only to the propriety of the issuance of the WPI and does not affect the merits of the main case for injunction.

On a final note, the twin requisites of (1) acting without or in excess of jurisdiction, or with grave abuse of discretion, and (2) there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law, must be present in order to justify the issuance of a writ of certiorari. If any of these two requisites is absent, as in the case at bench, a petition for certiorari will not prosper.

WHEREFORE, the instant petition for certiorari is DENIED. Accordingly, the January 24, 2011 and the June 5, 2012 Resolutions of the National Commission on Indigenous People-CAR in NCIP CASE No. 05-CAR-10 are hereby AFFIRMED.

SO ORDERED.

Villon (Chairperson) and Macalino, JJ., concur.

[1] Rollo, pages 3-27.

[2] Penned by Atty. Brain Masweng, *ibid.*, pages 30-34.

[3] *Ibid.*, pages 50-53.

[4] *Ibid.*, page 63.

[5] *Ibid.*, pages 66-67.

[6] *Ibid.*, page 68.

[7] *Ibid.*, page 69.

[8] *Ibid.*, page 82.

[9] *Ibid.*, pages 83-84.

[10] *Ibid.*, page 85.

[11] *Ibid.*, pages 86-92.

[12] *Ibid.*, page 95.

[13] See Temporary Restraining Order, *ibid.*, pages 106-108.

[14] *Ibid.*, pages 132-136.

[15] *Ibid.*, pages 238-244.

[16] *Ibid.*, page 245.

[17] Supra, at note 2.

[18] Ibid., pages 35-45

[19] Supra, at note 3.

[20] Ibid., pages 14-15.

[21] Los Baños Rural Bank, Inc. v. Africa, G.R. No. 143994. July 11, 2002. See also Marquez v. Sanchez, G.R. No. 141849. February 13, 2007.

[22] Ibid.

[23] G.R. No. 180206. February 4, 2009.

[24] See Australian Professional v. Municipality of Padre Garcia, G.R. No 183367. March 14, 2012.

[25] Ibid.

[26] Supra, at note 23.

[27] Los Baños Rural Bank, Inc. v. Africa, supra, at note 21.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.