

**CAMILO E. ESICO AND JEFF A. ELAGO, PETITIONERS, VS.
HONORABLE JOSEFINA D. FARRALES, IN HER CAPACITY AS
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 69, IBA,
ZAMBALES, ENVIRONME...**

Ponente: REYES, JR., J.C., J.

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REYES, JR., J.C., J.:

Before Us is a Petition for Certiorari filed under Rule 65 of the 1997 Rules of Civil Procedure, seeking to annul and set aside the Resolution dated April 27, 2012 and Order dated June 19, 2012 of the Regional Trial Court, Branch 69 of Iba, Zambales in Special Civil Action No. RTC 165-I.

The antecedents:

On September 3, 2010, Small-Scale Mining Permits (SSMP) Nos. 2010-019 (Rollo, pp. 40-41) and 2010-017 (Rollo, pp. 42-43) were granted respectively to petitioners Camilo E. Esico and Jeff A. Elago (hereinafter petitioners). The said permits were good for a period of two (2) years from date of issuance.

Sometime in November 2011, petitioners commenced their mining activities. On December 27, 2011, however, respondent Lormelyn E. Claudio (hereinafter Claudio), Regional Director of Environmental Management Bureau – Regional Office No. 3 (EMB - Region 3) issued a Notice of Violation to petitioner Esico. (Rollo, p. 94) A Notice of Violation was subsequently issued to petitioner Elago on January 30, 2012. (Rollo, p. 104) Both notices were issued on the ground of petitioners' lack of Environmental Compliance Certificate (ECC).

On January 17, 2012, respondent Claudio issued a Cease and Desist Order (Rollo, p. 96) against petitioner Esico while the Cease and Desist Order against petitioner Elago was issued on February 20, 2012. (Rollo, p. 104)

Aggrieved over the issuance of the Cease and Desist Orders, petitioners filed with the RTC a petition for injunction with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction (Rollo, pp. 30-39).

On April 27, 2012, the RTC issued the assailed Resolution (Rollo, pp. 19-26) denying petitioners' prayer for issuance of temporary restraining order and/or writ of preliminary injunction. It explained that petitioners failed to satisfactorily establish that they have a clear and unmistakable right to carry out mining operations for their failure to submit an Environmental Clearance Certificate. Nonetheless, the Cease and Desist Orders issued against petitioners were declared invalid, ineffective and unlawful for having been issued in disregard of petitioners' right to due process. The dispositive portion reads:

“IN VIEW THEREOF, the petitioners' application of (sic) issuance of temporary restraining order/preliminary injunction is DENIED.

The Cease and Desist Orders issued by public respondent Claudio against Esico and Elago, being violative of administrative due process are SET ASIDE. The matter of issuance of CDO is remanded to the Environment Management Bureau, Regional Office No. 3 – DENR, which is hereby directed to take proper steps to correct

the due process errors mentioned above.

Meantime, finding the motion for extension of time to file answer filed by Atty. Armando R. Preclaro, counsel for the respondents, to be reasonable, the same is granted. Atty. Preclaro is granted a non-extendible period of 15 days from receipt to file answer or any responsive pleading.

SO RESOLVED.” (Rollo, p. 26)

Petitioners subsequently sought partial reconsideration of the Resolution dated April 27, 2012 but the motion was denied in the assailed Order dated June 19, 2012. (Rollo, pp. 27-29)

Hence, the instant petition raising the following errors-

“A. THE HONORABLE PUBLIC RESPONDENT GRAVELY ABUSED HER DISCRETION IN REFUSING TO ISSUE A TRO/WRIT OF PRELIMINARY INJUNCTION AGAINST THE PRIVATE RESPONDENTS IN SP. CIVIL CASE NO. RTC-165-1 DESPITE HER UNEQUIVOCAL FINDING OF PRIVATE RESPONDENTS' VIOLATION OF PETITIONERS' RIGHT TO DUE PROCESS, WHICH VIOLATION IS THE VERY BASIS OF PETITIONERS' MAIN CAUSE OF ACTION FOR INJUNCTION AND ISSUANCE OF A TRO/WRIT OF PRELIMINARY INJUNCTION THEREIN[;] AND

B. THE HONORABLE PUBLIC RESPONDENT GRAVELY ABUSED HER DISCRETION IN STILL ALLOWING THE PRIVATE RESPONDENTS TO CORRECT THEIR DUE PROCESS VIOLATION AND IN NOT ISSUING A TRO/PRELIMINARY INJUNCTIVE WRIT DESPITE THE FACT THAT THERE IS NO LAW OR RULE REQUIRING PETITIONERS, AS SMALL-SCALE MINING PERMITEES, TO SECURE AN ECC FOR THEIR MINING ACTIVITIES.” (Rollo, p. 9)

In the main, petitioners ascribe grave abuse of discretion upon the RTC for denying their prayer for injunctive relief despite the finding that respondents EMB-Region 3 and Claudio failed to observe administrative due process when they issued the Cease and Desist Orders. They further allege that the RTC gravely abused its discretion in not issuing a temporary restraining order despite the fact that they are not required to secure an Environmental Compliance Certificate.

The petition is not impressed with merit.

It is well-settled that the grant or denial of an injunctive relief is discretionary on the part of the trial court. (Pineda vs. Court of Appeals, 635 SCRA 274, 284 [2010]; BSP Monetary Board vs. Nina Antonio -Valenzuela, 602 SCRA 698, 722 [2009]) Thus, the rule is, the matter of the issuance of a writ of preliminary injunction is addressed to the sound discretion of the trial court, unless the court commits grave abuse of discretion. (OWWA vs. Chavez, 524 SCRA 451, 471 [2007])

Section 1, Rule 58 of the 1997 Rules of Civil Procedure, defines a preliminary injunction as an order granted at any stage of an action prior to the judgment or final order requiring a party or a court, an agency or a person to refrain from a particular act or acts. Section 3, Rule 58 of the 1997 Rules of Civil Procedure, enumerates the grounds for the issuance of a writ of preliminary injunction as follows:

“Sec. 3. Grounds for issuance of preliminary injunction. — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.”

Thus, to be entitled to the injunctive writ, the movant must show that (1) there exists a clear and unmistakable right to be protected, that is a right in esse; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage. (*Australian Professional Realty, Inc. vs. Municipality of Padre Garcia*, 668 SCRA 253, 261 [2012])

After a judicious evaluation of the records, this Court does not find attendant the requisites for the issuance of an injunctive writ. This Court is not convinced that petitioners were able to show a clear and unmistakable legal right to warrant their entitlement to the writ. Although it is true that petitioners were holders of valid small-scale mining permits when they filed the petition for injunction, they seemed to have overlooked that their small-scale mining permits were subject further to the submission of Environmental Compliance Certificate approved by respondent EMB – Region 3. The small-scale mining permits granted to petitioners similarly provide that:

“xxx this Small Scale Mining Permit is hereby granted to xxx subject to the terms and conditions herein stated, to wit:

xxx xxx xxx

9. This permit shall be subject further to the following:

xxx xxx xxx

c. Submission of Environmental Compliance Certificate (ECC) approved by the Environmental Management Bureau Regional Office Region III, San Fernando City, Pampanga;

xxx xxx xxx.” (Emphasis supplied) (Rollo, p. 41 and Rollo, p. 43)

Perforce, for petitioners' failure to fully comply with the terms and conditions set forth in their mining permits, their rights to carry out mining operations at Sitio Mandaloy, Masinloc, Zambales are far from clear and unmistakable. Absent such right in esse, the denial of petitioners' prayer for injunctive writ was in order.

At this point, it well to emphasize that the duty of the court taking cognizance of a prayer for a writ of preliminary injunction is to determine whether the requisites necessary for the grant of an injunction are present in the case before it. (*Yujuico vs. Quiambao*, 513 SCRA 243, 261 [2007]) Since the RTC's denial of petitioners' prayer for temporary restraining order and/or writ of preliminary injunction was supported by the records and by the applicable laws and jurisprudence, no grave abuse of discretion can imputed upon it. Grave abuse of discretion means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction. (*Zuellig Freight and Cargo Systems vs. NLRC*, G. R. No. 157900, July 22, 2013)

Indeed, in a special civil action for certiorari brought against a court or quasi-judicial body with jurisdiction over a case, petitioner carries the burden of proving that the court or quasi-judicial body committed not a merely reversible error but a grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the impugned order. (*Tan vs. Antazo*, 644 SCRA 337, 342 [2011]) There being no grave abuse of discretion on the part of the RTC, the extraordinary writ of certiorari will certainly not lie in this case. If at all the RTC committed any error, it

was merely in the nature of an error of judgment and not an error of jurisdiction.

WHEREFORE, premises considered, the instant petition is DENIED. The assailed Resolution dated April 27, 2012 and Order dated June 19, 2012 of the Regional Trial Court, Branch 69 of Iba, Zambales in Special Civil Action No. RTC 165-I are AFFIRMED.

SO ORDERED.

Lopez, M.V., and Inting, S.B., JJ., concur.

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