

PHILNICO INDUSTRIAL CORPORATION AND PACIFIC NICKEL PHILIPPINES, INC., PETITIONERS, VS. HON. ERNESTO T. MATUGAS, MAYOR OF THE CITY OF SURIGAO, RESPONDENT.

Ponente: FRANCISCO, J.

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FRANCISCO, J.:

This is a Petition for Certiorari and Prohibition^[1] assailing the Advisory^[2] dated 1 July 2013, issued by the respondent, Hon. Mayor Ernesto T. Matugas of Surigao City, with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) to enjoin the respondent, and all other persons acting in his behalf, from taking over possession, custody and assuming control over the 106-hectare parcel of land covered by Special Patent No. 3745 subject of this instant petition.

Factual Antecedents

The present petition involves a parcel of land located in Nonoc Island, Surigao City with an area of approximately 106 hectares. This 106-hectare parcel of land was formerly covered under the Surigao Mineral Reservation.

The Petition alleges that the petitioners and their related companies (the “Philnico Group”), as a group of companies, are engaged in the business of mining and mineral processing.^[3] According to the petitioners, the Philnico Group is the owner and possessor, and maintains certain facilities inside the nickel refinery complex found in the subject 106-hectare parcel of land.^[4] On the other hand, petitioner Pacific Nickel Philippines, Inc. (PNPI) is the holder of Mineral Production Sharing Agreement (“MPSA”) No. 072-97-XIII covering about 23,771 hectares of mining contract area located in Nonoc Island and nearby areas.^[5]

On 1 May 1999, a Memorandum of Agreement^[6] (hereafter referred to as “MOA”) was entered into by and between the City of Surigao, represented by its then Mayor, Rolando A. Sering, and herein petitioner, Philnico Industrial Corporation (Philnico), geared towards the creation and establishment of an Ecozone within the subject 106-hectare property. Through the MOA, Philnico and the City of Surigao made the following declarations:

WHEREAS, Philnico and the City of Surigao are both interested in establishing, developing and operating a Special Economic Zone, however, in view of the keen interest of foreign locators on the existing facilities and infrastructure within the Nonoc Nickel Refinery, Philnico assumes the responsibility in establishing, developing and operating a Special Economic Zone in initially a 106-hectare portion of Nonoc Island, Surigao City originally covered by a Mineral Production Sharing Agreement (MPSA) between the Republic of the Philippines and Philnico;

WHEREAS, the Parties realize that as a prerequisite to the successful establishment and operation of the Ecozone in the Property wherein foreign locators may locate or relocate, there is a need to reclassify the Property from mineral land into private land which can be accomplished by the reclassification of the Property by act of the President of the Republic of the Philippines and the subsequent acquisition of the Property, by sale or donation or otherwise, by a Filipino Public Corporation, such as, the City of Surigao;

WHEREAS, the City of Surigao realizes that the Ecozone will bring needed development and other economic

opportunities to the city and nearby municipalities, and create job and other economic opportunities for the residents of the city and of the nearby municipalities;

WHEREAS, in view of the foregoing, the City of Surigao has manifested its support for the aforesated plan of Philnico of establishing, developing and operating an Ecozone in the Property and has, therefore, offered its assistance and cooperation towards the successful completion of the same;

WHEREAS, the City of Surigao is interested in acquiring the Property from the Philippine National Government (hereinafter named the "National Government") for eventual lease to Philnico for the purpose of establishing the Ecozone therein;

WHEREAS, in the spirit of cooperation that has existed between Philnico and the City and residents of Surigao for several decades now, Philnico has offered, subject to a definitive repayment scheme and the lease of the Property to Philnico, to advance the necessary funding for the reclassification of the Property and the subsequent acquisition thereof by the City of Surigao;^[7]

On 26 August 1999, then President of the Republic of the Philippines, Joseph E. Estrada, issued Proclamation No. 172^[8] excluding the subject 106-hectare land from the operation of the Surigao Mineral Reservation, declaring it open for disposition, and donating the said property to the City of Surigao for the purpose of establishing a special economic zone.

Thereafter, on 21 September 1999, pursuant to the terms of the MOA, Philnico and the City of Surigao, represented by Mayor Roland A. Sering, entered into a Lease Contract^[9] for the lease of the 106-hectare parcel of land in favor of Philnico for a period of not less than twenty-five (25) years but not more than fifty (5) years, renewable for another twenty-five (25) years at the option of Philnico. The effectivity of the Lease Contract was conditioned on the occurrence of certain events including the acquisition of the subject property by the City of Surigao and the proclamation of the same as an Ecozone.^[10]

On 6 October 1999, President Joseph E. Estrada issued Presidential Proclamation No. 192^[11] which created and designated the 106-hectare land as a special economic zone.

Subsequently, through a Deed of Donation^[12] dated 10 December 1999, the Republic of the Philippines, represented by then Executive Secretary Ronaldo B. Zamora, ceded, transferred, and conveyed the subject 106-hectare parcel of land in favor of the City of Surigao, represented by then Mayor Alfonso S. Casurra.

By virtue of the issuance of Presidential Proclamation No. 192 and the execution of the Deed of Donation on 10 December 1999, the Lease Contract entered into between the City of Surigao and Philnico thus took effect.

Several years later, on 23 June 2009, then President of the Republic of the Philippines Gloria Macapagal-Arroyo issued Special Patent No. 3745^[13] which granted and conveyed the subject 106-hectare tract of land including the appurtenances thereto, in favor of the City of Surigao.

Then, on 20 May 2011, herein respondent, Hon. Mayor Ernesto T. Matugas, wrote a Letter^[14] addressed to petitioner Philnico informing the latter of the City Government's decision to set aside the 21 September 1999 Lease Contract on the ground that it is not in accord with law and that some provisions therein appear to be disadvantageous to the interest of the city government.

On 30 May 2011, the respondent wrote another Letter^[15] addressed to petitioner Philnico declaring that the City Government of Surigao will fully assume the supervision and control over the 106-hectare lot in Nonoc Island and take physical custody of the structures and facilities therein.

In another Letter,^[16] dated 25 June 2012, the respondent declared that due to petitioner Philnico's refusal to

vacate and surrender possession of the subject property, the City Government of Surigao was left with no other recourse than to assume possession and physical take over of the 106-hectares Special Economic Zone in Nonoc Island.

In response to the 25 June 2012 Letter, petitioner Philnico wrote a Letter,[17] dated 13 July 2012, to the Office of the respondent Mayor raising its objection to respondent's position as well as the City Government's move to take over the 106-hectare Special Economic Zone.

Thereafter, the respondent sent a Letter,[18] dated 7 February 2013, addressed to Atty. Michael G. Aguinaldo, the Deputy Executive Secretary for Legal Affairs of the Office of the President, requesting for clarification as to the word “appurtenances” as contained in the provisions of Special Patent No. 3745. In a Letter,[19] dated 25 March 2013, Atty. Michael G. Aguinaldo clarified that the term “appurtenances” as used in Special Patent No. 3745 includes tangible things like improvements made on the property as well as intangible things like rights of way and similar easements.[20] In the same letter, Atty. Aguinaldo stressed that the special patent made the transfer of the subject property and all its appurtenances subject to any existing private rights.[21] Atty. Aguinaldo then advised the City Government of Surigao to verify if any such improvements on the subject property are covered by private rights before utilizing such improvements.[22]

On 1 July 2013, the respondent issued the challenged Advisory[23] which states as follows:

Please be informed that by virtue of a Special Patent granted unto the City Government of Surigao pursuant to a Presidential Proclamation which legally vests ownership therewith and concomitant to the local police power, the City Government has therefore the full authority to exercise its powers necessary and appropriate for the efficient and effective governance essential to the promotion of general welfare of its constituents in relation to the optimal utilization of the 106.746 hectares (sic) lot.

All concerned are hereby advised that the premises within the 106.746 hectares (sic) lot will be secured by the City Government as security forces will be deployed over the area to assure that all undertakings thereon including physical custody of the structures and facilities will not be hampered or jeopardized.[24]

Thus, on 4 July 2013, the petitioners filed the instant Petition for Certiorari and Prohibition with application for the issuance of a TRO and/or WPI.

On 7 October 2013, the petitioners filed a Manifestation and Urgent Motion[25] (to resolve petitioners' application for temporary restraining order and/or writ of preliminary injunction). In the said Motion, the petitioners alleged, among others, that on 2 October 2013, they were furnished a “Notice to Vacate”[26] dated 25 September 2013 signed by the City Legal Officer and Concurrent City Administrator of Surigao City.

In a Resolution[27] dated 30 October 2013, this Court directed the parties to submit their respective memoranda in amplification of their positions within fifteen (15) days from receipt of notice. In the same Resolution, this Court granted the petitioners' application for the issuance of a TRO.

Accordingly, this Court issued a Temporary Restraining Order, effective for sixty (60) days unless sooner revoked, enjoining the respondent Mayor, and all other persons acting in his behalf, from taking over possession, custody and assuming control over the subject 106-hectare parcel of land including the improvements thereon. This Court then set the petitioners' application for a Writ of Preliminary Injunction for hearing on 4 December 2013.

The hearing on the Petition for the issuance of a Writ of Preliminary Injunction was conducted on 4 December 2013, after which this Court issued an Order,[28] dated 9 December 2013, stating as follows:

In today's proceedings, the parties have exhaustively discussed the merits of their own claims and defenses. It

appears that there is no material factual issue involved and upon motion by the parties, petitioners as well as the respondents are given twenty (20) days from today within which to file their respective memorandum and after the lapse of the period given, the issue on the issuance of Writ of Preliminary Injunction shall be considered submitted for resolution with or without memoranda.

Considering the manifestations of petitioners as well as respondents' counsel, the memorandum shall likewise dwell on the merits of the case and on their motion, the petition shall be considered submitted for decision.[29]

The petitioners raise the following as grounds for the allowance of their petition:

I.

UNDER THE EXPANDED EXTRAORDINARY CERTIORARI JURISDICTION OF COURTS, IN ACCORDANCE WITH ARTICLE VIII, SECTION 1 OF THE 1987 PHILIPPINE CONSTITUTION, THIS HONORABLE COURT HAS THE POWER TO DETERMINE IF THERE IS GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION ON THE PART OF RESPONDENT MAYOR OF SURIGAO CITY.

II.

THE WRITS OF CERTIORARI AND PROHIBITION LIE IN THE PRESENT CASE BECAUSE THE CHALLENGED ISSUANCE/ORDER OF RESPONDENT MAYOR AS CONTAINED IN HIS ADVISORY DATED 1 JULY 2013 IS:

- (i) TAINTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION;
- (ii) AN INVALID EXERCISE OF POLICE POWER;
- (iii) IN PATENT VIOLATION OF PETITIONERS CONSTITUTIONAL AND OTHER LEGAL RIGHTS;
- (iv) ARBITRARY, UNREASONABLE, OPPRESSIVE, AS WELL AS TAINTED BY PASSION AND HOSTILITY OF RESPONDENT TOWARDS HEREIN PETITIONERS;
- (v) GRAVELY PREJUDICIAL TO THE ECONOMIC INTEREST OF THE REPUBLIC AND OF THE AFFECTED LOCAL GOVERNMENT UNITS.

III.

THE PRESENT CASE FALLS AMONG THE EXCEPTIONS TO THE RULE ON HIERARCHY OF COURTS DUE TO THE FOREGOING GROUNDS WHICH CONSTITUTE SPECIAL AND COMPELLING REASONS.

IV.

DUE TO THE GRAVE URGENCY OF THE NEED TO IMMEDIATELY PREVENT RESPONDENT FROM CARRYING OUT AND IMPLEMENTING HIS CHALLENGED ISSUANCE/ORDER, PETITIONERS ARE ENTITLED TO THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND/OR WRIT OF PRELIMINARY INJUNCTION ENJOINING SUCH ACTS.[30]

Our Ruling

We shall first deal with the propriety of this present petition for certiorari and prohibition.

The respondent maintains that the petition for certiorari and prohibition filed by the petitioners is not the proper

remedy to nullify the Advisory dated 1 July 2013. The respondent argues that neither a petition for certiorari nor a petition for prohibition would lie against the issuance of the Advisory as the same was not done in the exercise of judicial, quasi-judicial, or ministerial functions as required under Rule 65 of the Rules of Court.

Indeed, as a general rule, a petition for certiorari must be directed against a respondent who is exercising judicial or quasi-judicial functions.[31] On the other hand, a petition for prohibition must be directed against a respondent who is exercising judicial, quasi-judicial, or ministerial functions.[32]

Nonetheless, the Supreme Court has, in several cases, recognized that the remedy of certiorari and prohibition can be availed of when there is an allegation of grave abuse of discretion on the part of the respondent. This is encompassed under the “expanded certiorari jurisdiction” of the courts.

The expanded certiorari jurisdiction of the courts is enshrined under Article VIII, Section 1 of the 1987 Philippine Constitution which provides:

“Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”

By virtue of the aforecited provision, the 1987 Constitution expanded the concept of judicial power to include “the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”[33]

Thus, in one case, the Supreme Court ruled that the special civil actions of certiorari and prohibition were proper despite the fact the respondent therein was not exercising any judicial, quasi-judicial, or ministerial functions.[34] The Supreme Court, citing the case of *Francisco v. House of Representatives*,[35] held:

Respondents raise the impropriety of the remedies of certiorari and prohibition. They argue that public respondent was not exercising any judicial, quasi-judicial or ministerial function in taking cognizance of the two impeachment complaints as it was exercising a political act that is discretionary in nature, and that its function is inquisitorial that is akin to a preliminary investigation.

These same arguments were raised in *Francisco, Jr. v. House of Representatives*. The argument that impeachment proceedings are beyond the reach of judicial review was debunked in this wise:

The major difference between the judicial power of the Philippine Supreme Court and that of the U.S. Supreme Court is that while the power of judicial review is only impliedly granted to the U.S. Supreme Court and is discretionary in nature, that granted to the Philippine Supreme Court and lower courts, as expressly provided for in the Constitution, is not just a power but also a duty, and it was given an expanded definition to include the power to correct any grave abuse of discretion on the part of any government branch or instrumentality.

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Francisco characterizes the power of judicial review as a duty which, as the expanded certiorari jurisdiction of this Court reflects, includes the power to “determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.”

In the present case, petitioner invokes the Court's expanded certiorari jurisdiction, using the special civil actions of certiorari and prohibition as procedural vehicles. The Court finds it well-within its power to

determine whether public respondent committed a violation of the Constitution or gravely abused its discretion in the exercise of its functions and prerogatives that could translate as lack or excess of jurisdiction, which would require corrective measures from the Court.[36] (citations omitted)

In the case at bench, this Court is called upon to determine whether the respondent Mayor, in issuing the assailed Advisory dated 1 July 2013, acted with such grave abuse of discretion amounting to lack or excess of jurisdiction. As discussed above, it is well within the Court's power and duty under its expanded certiorari jurisdiction to resolve such issue.

The respondent likewise argues that the filing of the instant petition violates the rule on hierarchy of courts.

The principle of hierarchy of courts requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court.[37] Hence, while the Supreme Court, Court of Appeals, and Regional Trial Courts exercise concurrent jurisdiction to issue writs of certiorari and prohibition, it does not give petitioners unbridled freedom of choice of court forum.[38]

However, the Supreme Court has held that the principle of hierarchy of courts is not an iron-clad rule.[39] In the case of *Republic v. Hon. Ramon S. Caguioa*,[40] the Supreme Court said:

In several cases, we have allowed direct invocation of this Court's original jurisdiction to issue writs of certiorari on the ground of special and important reasons clearly stated in the petition; when dictated by public welfare and the advancement of public policy; when demanded by the broader interest of justice; when the challenged orders were patent nullities; or when analogous exceptional and compelling circumstances called for and justified our immediate and direct handling of the case.

This Court finds that the circumstances of the case at bar call for a relaxation of the aforesaid rule. The challenged Advisory as well as the threatened acts of the respondent over the subject 106-hectare property do not only affect the private rights of the petitioners but also the welfare of the residents of Surigao City and its nearby municipalities. Involving as it does the establishment and development of an Ecozone, the pervasive economic implications of the case cannot be understated. Without a doubt, these are compelling circumstances that necessitate the invocation of this Court's jurisdiction.

Moreover, as We found during the 9 December 2013 hearing, there appears to be no material factual issue involved in this case.[41] The Supreme Court has held that a strict application of the rule on hierarchy of courts is not necessary when cases brought before the appellate courts do not involve factual but legal questions.[42]

The respondent further argues that the filing of the instant petition violates paragraphs 8.06 and 8.07 of the MOA which provide that “all disputes, controversies or differences between the Parties arising out of or in connection with this MOA or the Lease Contract shall be settled in accordance with the Philippine Law on Arbitration” and that “the Parties irrevocably and exclusively submit to the court having jurisdiction over the City of Surigao for the purpose of enforcing any right or obligation under or arising out of this MOA, the Lease Contract, and any alterations, changes, supplements and amendments thereto.”[43]

On the basis of the said provisions, the respondent argues that the instant issues must be and should be settled in accordance with the Philippine Arbitration Law or settled exclusively and irrevocably by the courts having jurisdiction over the City of Surigao and not through a petition for certiorari before this Court.

It is quite interesting that the respondent now invokes the provisions of the same MOA claimed to be non-existent in contemplation of law.

That said, this argument must likewise fail.

The respondent's invocation of the provisions of the MOA is misplaced. Contrary to the stand of the respondent, the instant petition does not involve any dispute between the parties arising out of or in connection with the MOA or the Lease Contract entered into between the City of Surigao and Philnico. The petition does not raise any issue regarding the construction or validity of the MOA or the Lease Contract. Neither does the petition seek the enforcement of any right or obligation under the said contracts.

What is being assailed in this petition are the acts of the respondent in issuing the Advisory dated 1 July 2013 and attempting to take over the 106-hectare property on the ground that the same were done with grave abuse of discretion amounting to lack or excess of jurisdiction.

This Court, therefore, finds that recourse through the present petition is proper.

Those issues having been settled, We shall now proceed to determine whether the respondent acted with grave abuse of discretion in issuing the assailed Advisory.

An act is considered as with grave abuse of discretion when such act is done in a “capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction.”[44] The abuse of discretion must be so patent and gross as to amount to an “evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.”[45]

The assailed Advisory was issued by the respondent on the basis of Special Patent No. 3745 by virtue of which the Republic of the Philippines granted and conveyed unto the City of Surigao the subject parcel of land. The respondent likewise claims that the MOA dated 1 May 1999 and the subsequent Lease Contract dated 21 September 1999 entered into between the City of Surigao and petitioner Philnico are void and non-existent in contemplation of law.

It must be stressed that Special Patent No. 3745 clearly provides that the grant of the land and the appurtenances thereto in favor of the City of Surigao is subject to any existing private rights. In fact, this was emphasized by Atty. Aguinaldo in response to the letter request sent by the respondent. Atty. Aguinaldo even advised the City Government of Surigao to verify if any improvements on the subject property are covered by existing private rights.

It must also be remembered that a duly executed contract carries with it the presumption of validity.[46] Thus, the MOA and Lease Contract entered into between the City Government of Surigao and Philnico are presumed valid and binding until and unless they are declared to be otherwise in a judicial proceeding. Absent a categorical declaration by a court of justice as to the validity of the said contracts, the respondent cannot unilaterally declare the same as void and non-existent.

As provided under the MOA and Lease Contract, herein petitioners have the clear and unmistakable right of possession over the subject 106-hectare parcel of land. Moreover, the petitioners have clearly established their lawful ownership and possession over the facilities, structures and other improvements situated at the subject property.[47] The petitioners' ownership of the facilities is even recognized under the provisions of the MOA.[48]

The proposed take over of the subject 106-hectare parcel of land and the facilities therein would be tantamount to the deprivation of the petitioners' properties without due process of law in violation of Article III, Section 1[49] of the 1987 Philippine Constitution.

It is clear from the foregoing that the assailed Advisory as well as the threatened acts of the respondent have no basis in fact nor in law and must be struck down for being tainted with such grave abuse of discretion amounting

to lack or excess of jurisdiction.

It bears pointing out that the respondent could have availed of the the provisions of the MOA in order to question the validity of the said Agreement and of the Lease Contract. Instead, the respondent chose to unilaterally disregard the said contracts in patent violation of the rights of the petitioners.

In sum, this Court finds that the respondent acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Advisory dated 1 July 2013.

WHEREFORE, premises considered, the Advisory dated 1 July 2013 issued by the respondent, Hon. Mayor Ernesto T. Matugas, is hereby SET ASIDE for being NULL and VOID.

This Court hereby PERMANENTLY ENJOINS the respondent Mayor, and all other persons acting in his behalf, from taking over possession, custody and assuming control in any manner or form of the subject 106-hectare parcel of land including the improvements thereon.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Borja, J., Ch., and Badelles, JJ., concur.

[1] Rollo, pp. 2-32.

[2] Rollo, p. 47.

[3] Rollo, p. 8.

[4] Ibid.

[5] Ibid.

[6] Rollo, pp. 50-58.

[7] Rollo, pp. 50-51.

[8] Rollo, pp. 61-65.

[9] Rollo, pp. 66-72.

[10] Section 12 of the Lease Contract; Rollo, p. 71.

[11] Rollo, p. 340.

[12] Rollo, pp. 73-76.

[13] Rollo, pp. 77-80.

[14] Rollo, p. 81.

[15] Rollo, p. 82.

[16] Rollo, pp. 83-84.

- [14] Rollo, p. 85.
- [18] Rollo, pp. 88-89.
- [19] Rollo, p. 90.
- [20] Ibid.
- [21] Ibid.
- [22] Ibid.
- [23] Supra at note 2.
- [24] Ibid.
- [25] Rollo, pp. 139-143.
- [26] Rollo, p. 145.
- [27] Rollo, pp. 147-149.
- [28] Rollo, pp. 294-295.
- [29] Rollo, p. 294.
- [30] Rollo, pp. 17-18.
- [31] Rule 65, Section 1 of the Revised Rules of Court
- [32] Rule 65, Section 2 of the Revised Rules of Court
- [33] Macalintal v. Presidential Electoral Tribunal, G.R. No. 191618, 7 June 2011.
- [34] Ma. Merceditas N. Gutierrez v. House of Representatives Committee on Justice, et al., 15 February 2011, G.R. No. 193459.
- [35] G.R. No. 160261, 10 November 2003.
- [36] Supra at note 34.
- [37] Jose Miguel T. Arroyo v. Department of Justice, et al., G.R. No. 199082, 18 September 2012.
- [38] Orlando a. Rayos, et al. v. The City of Manila, G.R. No. 196063, 14 December 2011.
- [39] Atty. Rogelio E. Sarsaba v. Fe Vda. de Te, G.R. No. 175910, 30 July 2009.
- [40] G.R. No. 174385, 20 February 2013.
- [41] Rollo, pp. 294-295.
- [42] Supra, note 39.
- [43] Rollo, p. 57.
- [44] Eric U. Yu v. Hon. Judge Agnes Reyes-Carpio, G.R. No. 189207, 15 June 2011.
- [45] Ibid.
- [46] GSIS v. Province of Tarlac, G.R. No. 157860, 1 December 2003.

[47] Judicial Affidavit of Manuel S. Palermo, Rollo, pp. 162-163.

[48] Rollo, p. 51.

[49] Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

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