

OCA CIRCULAR NO. 38 -2014, March 12, 2014

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TO : ALL JUDGES OF THE FIRST AND SECOND LEVEL COURTS

SUBJECT : JUDICIOUS IMPLEMENTATION OF COURT ISSUANCES CONCERNING THE BAN ON THE ISSUANCE OF TEMPORARY RESTRAINING ORDERS OR WRITS OF PRELIMINARY INJUNCTIONS INVOLVING GOVERNMENT INFRASTRUCTURE PROJECTS

The Department of Transportation and Communication and Department of Public Works and Highways thru the Honorable Joseph Emilio Aguinaldo Abaya and Honorable Rogelio L. Singson, respectively, have invited the attention of the Court regarding the ongoing several urgent projects that involve right-of-way issues. Corollary to these undertakings, they requested that, once again, all judges of the trial courts must be reminded of the judicious implementation of administrative issuances relative to the prohibition on the issuance of temporary restraining orders (TROs) and writs of preliminary injunction involving such government infrastructure projects.

In Administrative Circular No. 7-99 dated June 25, 1999, the Court enjoined judges to exercise utmost caution, prudence, and judiciousness in the issuance of TROs and writs of preliminary injunction. Pertinent portions of the said issuance is hereby quoted as follows:

Despite well-entrenched jurisprudence and circulars regarding exercise of judiciousness and care in the issuance of temporary restraining orders (TRO) or grant writs of preliminary injunction, reports or complaints on abuses committed by trial judges in connection therewith persist. Some even intimated that irregularities, including corruption, might have influenced the issuance of the TRO or the writ of preliminary injunction.

No less than the President of the Philippines has requested this Court to issue a circular reminding judges to respect P.D. No. 1818, which prohibits the issuance of TROs in cases involving implementation of government infrastructure projects. The Office of the President has likewise brought to the attention of this Court orders of judges releasing imported articles under seizure and forfeiture proceedings by the Bureau of Customs.

Judges are thus enjoined to observe utmost caution, prudence and judiciousness in the issuance of TRO and in the grant of writs of preliminary injunction to avoid any suspicion that its issuance or grant was for consideration other than the strict merits of the case.

Judges should bear in mind that in *Garcia v. Burgos* (291 SCRA 546, 571-572 [1998]), this Court explicitly stated:

Section 1 of P.D. 1818 distinctly provides that "[n]o court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project x x x of the government, x x x to prohibit any person or persons, entity or government official from proceeding with or continuing the execution or implementation of any such project, x x x or pursuing any lawful activity necessary for such execution, implementation or operation." At the risk of being repetitious, we stress that the foregoing statutory provision expressly deprives courts of jurisdiction to issue injunction writs against the implementation or execution of an infrastructure

project.

Their attention is further invited to Circular No. 68-94, issued on 3 November 1994 by the OCA OIC Deputy Court Administrator Reynaldo L. Suarez, on the subject "Strict Observance of Section 1 of P.D. 1818

Envisioned by Circular No. 13-93 dated March 5, 1993, and Circular No. 20-92 dated March 24, 1992."

Finally, judges should never forget what the Court categorically declared in *Minos v. Natividad* (213 SCRA 734, 742 [1992]) that "[b]y express provision of law, amply supported by well-settled jurisprudence, the Collector of Customs has exclusive jurisdiction over seizure and forfeiture proceedings, and regular courts cannot interfere with his exercise thereof or stifle or put it to naught. (Emphasis supplied)

Subsequently, the same proscription on the issuance of TROs and writs of preliminary injunction was further reiterated in Administrative Circular No. 11-2000 dated November 13, 2000, in view of the enactment of Republic Act No. 8975, also known as "An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for Other Purposes." Section 3 of the Act quoted therein reads as follows:

SEC. 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions. - No Court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

- (a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;
- (b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;
- (c) Commencement, prosecution, execution, implementation, operation of any such contract or project;
- (d) Termination or rescission of any such contract/project; and
- (e) The undertaking or authorization of any other lawful activity necessary for such contract/project

The prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

However, due to the negative reports that reached the Court not only on the issuance of TROs or writs of preliminary injunction in cases involving government projects but also on the complaints about delays in the disposition of such cases after a TRO is converted into a writ of preliminary injunction, the Court issued Administrative Circular No. 62-2002 dated November 20, 2002. It reminded all trial court judges to strictly comply with Administrative Circular Nos. 7-99 and 11-2000, and directed them to submit the reports on the status of TROs or writs of preliminary injunction issued in various cases.

Lastly, the Court through the Office of the Court Administrator issued OCA Circular No. 79-2003 dated June 12, 2003. The trial court judges are once again cautioned concerning the improvident or irregular issuance of TROs or the grant of writs of preliminary injunction. They are reminded to be aware of the cases where the issuance of temporary restraining order or the grant of preliminary injunction is proper, as well as the cases where they are not including cases concerning government infrastructure projects.

In view of all the foregoing, all concerned are hereby EXHORTED to CONTINUOUSLY OBSERVE and IMPLEMENT the abovementioned administrative issuances of the Court to ensure that all cases involving government infrastructure projects can be resolved in a speedy and timely manner.

Strict compliance is hereby enjoined.

March 12, 2014

(SGD.) JOSE MIDAS P. MARQUEZ
Court Administrator

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