

**EXPECTACION BAUTISTA BALDEO, PETITIONER, VS. JUDGE ROMEO L. VILLANUEVA, PRESIDING JUDGE OF REGIONAL TRIAL COURT FOURTH JUDICIAL REGION BRANCH 60 AND MAYOR RODERICK A. UMALI, MUN...**

Ponente: CRUZ, R.A., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/b1967cafe7eb/>

---

**CRUZ, R.A., J.:**

**THE CASE**

This is a Petition for Certiorari under Rule 65 of the Rules of Court seeking to nullify the Orders dated August 3, 2011 and May 7, 2012, respectively, both issued by the Regional Trial Court of Lucena City, Branch 60, in Special Civil Action No. 2010-05 for Certiorari and/or Mandamus with Prayer for a Writ of Preliminary Injunction and a Temporary Restraining Order, the dispositive portions of which read, as follows:

**(a) Order[1] dated August 3, 2011**

X X X

“WHEREFORE, in light of the foregoing, the prayer for the issuance of a writ of preliminary injunction is hereby denied.

“SO ORDERED.”

X X X

**(b) Order[2] dated May 7, 2012**

X X X

“Accordingly, the instant Motion for Reconsideration is hereby denied for utter lack of merit.

“SO ORDERED.”

X X X

**THE ANTECEDENTS**

This petition originated from the action for Certiorari and/or Prohibition and/or Mandamus with Prayer for a Writ of Preliminary Injunction and a Temporary Restraining Order filed by Atty. Expectacion Bautista-Baldeo against the Municipal Mayor of Tiaong, Quezon, Mayor Roderick A. Umali, before the RTC of Lucena City, docketed as Special Civil Action No. 2010-05 and raffled to Branch 60 of the court.

The petition alleged that petitioner is the owner of a store known as Tindahan ng Bayan situated at the portion of the ground floor of Rex Tower Building located at Punzalan Street, Poblacion 1, Tiaong, Quezon with an area of 108 square meters. The lot where the building is erected is also owned by petitioner and her late husband Regore B. Baldeo. The commodities sold in the Tindahan ng Bayan, established in 2005, were fish, meat, chicken and

vegetables. On May 3, 2005, when the Sanitary Permit to Operate was secured by petitioner, it was named Sari-Sari Market.[3] Since the portion of the commercial building with the area of 108 square meters was constructed for purposes of operating the so-called Tindahan ng Bayan, the necessary building permit and zoning permit were issued by the municipal authorities for its construction.

Petitioner alleged that the income derived from the Tindahan ng Bayan is the primary source of her family's support and sustenance of her four (4) children's college education, and also gradually helped in paying all the outstanding debts and loans incurred by petitioner at Tiaong Rural Bank in the amount of P1,300,000.00. Petitioner's storekeeper, vendors and helpers at the said establishment also derived income from the Tindahan ng Bayan.

During the administration of former Mayor Raul S. Umali, he issued a Closure Order[4] dated September 11, 2007 against petitioner, ordering to close and vacate the premises of the building where the subject Tindahan ng Bayan is situated. Petitioner opposed said move by filing a case against former Mayor Raul S. Umali for Mandamus with Prayer for a Writ of Preliminary Injunction and a Temporary Restraining Order docketed as Special Civil Action No. 2007-09 in the RTC of Lucena City, Branch 59. The RTC issued a Temporary Restraining Order after petitioner posted a bond in the amount of P100,000.00. The parties agreed to maintain the status quo while the case was still unresolved. In the meantime, former Mayor Raul S. Umali's term of office ended, and he was succeeded by his son, Mayor Roderick A. Umali.

Petitioner alleged that during the campaign period for the May 2010 elections, Mayor Roderick Umali repeatedly announced and promised that he will order petitioner's establishment closed as soon as he assumed office. Vendors of the new public market at Barangay Lalig, Tiaong, Quezon rejoiced and voted for him, thinking that the closure would benefit them as they could monopolize the business. Wanting to make good his promise to all the vendors of the Tiaong Public Market, Mayor Roderick Umali called petitioner to a meeting on July 6, 2010 at 8 o'clock in the morning, but which pushed through at 1 o'clock that afternoon. During the said meeting, Mayor Umali verbally directed the petitioner to close her Tindahan ng Bayan and to vacate the premises effective immediately. Petitioner refused, prompting Mayor Roderick Umali to issue a Closure Order effective on July 12, 2010. Petitioner begged for reconsideration but it was unheeded. At 5 o'clock in the afternoon of the same day, July 6, 2010, the Closure Order was delivered to the petitioner together with two (2) undated copies of the Inspection Report of Ms. Lani M. Limbo, Senior Management Specialist[5] and Inspection Report of Sanitation Inspector, Mr. Noel D. Pagkaliwangan.[6]

The Closure Order[7] dated July 6, 2010 stated, among others, to wit:

x x x

“Based on the latest inspection and validation report submitted by the Environment and Natural Resources Section of the Municipal Agriculture Office and the Environmental Health Service of the Office of the Municipal Health Officer you are found to have violated and continue to violate existing National and local laws, ordinances and the Code of Sanitation of the Philippines.

“In order therefore not to continuously prejudice the interest of the general public and the local government, effective July 12, 2010, Monday, this CLOSURE ORDER is hereby issued upon all persons and entities concerned, in effect ordering them to close/vacate the premises of the building being used as stalls for the selling of wet and semi-wet consumer goods, and to stop their illegal trading/business operations effective immediately.

“Further the Local Police Force together with the representatives from the Office of the Municipal Mayor, Municipal Health Officer, MPDC, Market Supervisor, Treasurer likewise directed to enforce this legal closure

order and confiscate ALL meat, fish, chicken, and vegetables being sold inside the premises.

“For the information and immediate compliance of all concerned.”

x x x

Petitioner alleged that she was never advised nor informed of any alleged violation she committed, nor was she given the chance to comply with the requirements demanded from her. She was not given the opportunity to be heard by Mayor Roderick Umali or his subordinates who conducted, prepared and submitted the inspection report. No written or verbal communication was sent to convey such findings to petitioner prior to the issuance of the Closure Order.

Upon receipt of the Closure Order, petitioner sent a letter dated July 7, 2010 to Mayor Roderick Umali requesting him to reconsider and set aside the Closure Order. She did not receive any reply to her letter. Petitioner then sent a letter to Ms. Lani M. Limbo, Senior Environmental Management Specialist of the Municipal Agriculture Office, and to Mr. Noel D. Pagkaliwangan, Sanitation Inspector II, questioning why she was not informed and advised regarding their negative findings about her establishment. She also questioned their failure to give her reasonable time and opportunity to fix and comply with the requirements being demanded.

On July 7, 2010, petitioner made a follow-up on her application for Mayor's Permit but Municipal Administrator Raul Joseph A. Umali II told petitioner, without citing any reason at all, that no mayor's permit shall be issued to her. He also prohibited all authorized signatories to process her application even though she has fully complied with all the requirements. Some of the recommending officials refused to process and evaluate her application for fear that they will be in trouble with the Municipal Administrator and with the Mayor.

Petitioner again wrote them to allow the recommending officials to evaluate and process her application so that she would have the opportunity to fix other requirements if upon evaluation, there appears to be anything lacking, but her request was ignored.

Petitioner alleged that the facts she stated clearly prove the following, to wit:

- Mayor Umali violated and continuously violates the fundamental rights of the petitioner which is a clear and positive right to injunctive relief.
- There exists irreparable injury that would warrant protection by a writ of preliminary injunction.
- Mayor Umali acted with grave abuse of discretion amounting to lack or excess of jurisdiction. He unlawfully excludes petitioner from the enjoyment of her right to which such other is entitled.
- Mayor Umali based the issuance of the Closure Order on the ground that petitioner violated existing local, national laws and ordinances and the Code of Sanitation of the Philippines.

Ultimately, petitioner prayed for the issuance of a Writ of Preliminary Injunction against Mayor Roderick Umali from enforcing the Closure Order dated July 6, 2010 and pending the issuance thereof, the issuance of a temporary restraining order to enjoin the Mayor from physically closing the building and stopping the operation of the Tindahan ng Bayan. She also prayed that Mayor Umali be ordered to act on petitioner's application for business permit to operate Tindahan ng Bayan at the 108-square-meter portion of the ground floor of Rex Tower Building. Also prayed for by petitioner was payment of damages she sustained by reason of Mayor Umali's wrongful acts.

A Temporary Restraining Order, effective for the period of 72 hours, was issued by the Executive Judge of the RTC through the Order[8] dated July 9, 2010, ordering the parties to maintain the status quo pending the raffle

and assignment of the case. In addition to praying for the extension of the TRO to 20 days, the petitioner also moved that the said case be consolidated with Special Civil Action No. 2007-09 already filed with the said court. The TRO was extended for another 14 days from July 15, 2010, subject to petitioner's posting of a bond in the amount of P100,000.00.

In his Answer/Comment with Opposition to the Prayer for a Writ of Preliminary Injunction,[9] Mayor Roderick A. Umali averred that the Sanitary Permit was issued for the purpose of the operation of a restaurant and a sari-sari store and not a wet market (talipapa) and the stalls in the Tindahan ng Bayan are merely being rented out by petitioner to individual vendors and storeowners and the latter and their helpers are not employees of petitioner. Likewise, the building and zoning permits were issued for the construction of a commercial/ residential building and not for a wet market.

He maintained that petitioner has no cause of action and alleged, as his affirmative defenses, that as early as 2001, the local government of Tiaong, Quezon has recognized the problems arising from the operations of the public market in the old site along the public road, such as traffic obstruction, vendor congestion and sanitation. Hence, on September 21, 2001, the Sangguniang Bayan of Tiaong, Quezon adopted a resolution, Kapasiyahan Bilang 2001-179, empowering then Mayor Raul Umali to create a special committee to study and determine the necessity of widening the old public market in Tiaong, Quezon. On October 23, 2001, the Sangguniang Bayan ng Tiaong, Quezon adopted another resolution, Kapasiyahan Bilang 2001-189, premised on the same problems mentioned in the earlier resolution and calling for the prioritization by then Mayor Raul Umali of the transfer and construction of a new public market.

By virtue of the Sangguniang Bayan resolutions and provisions of the Tiaong Market Code of 2004 empowering then Mayor Raul Umali to exercise direct and immediate administration and control over the public market and personnel thereof including those that are related to the maintenance, operation, peace and order of the market premises in accordance with laws, local ordinances and rules and regulations pertinent therein, then Mayor Raul Umali created a Special Committee on Expansion Market (SCEM) which will assist him in the planning, consultation and in providing the technical know-how to efficiently and effectively exercise the said functions. Thereafter, the New Public Market Implementing Rules and Regulations was adopted providing for the mechanics and requirements for owning or leasing a stall in the new public market.

On April 1, 2005, the occupants of the stalls in the old market voluntarily demolished their stalls and moved to the new market in Brgy. Lalog, about 600 meters from the old public market site located at the adjacent barangay. On the same day, petitioner opened the "New Talipapa" at the Rex Tower Building located at Poblacion 1 about a block away from the old Public Market site. Petitioner's operation of her "New Talipapa" just across the old market site rendered nugatory the legislative intent in transferring the new public market to a new site as the problems besetting the municipality during the operation of the old public market such as traffic and congestion along the national highway persisted. The operations of the New Talipapa also resulted in the losses by the old stall owners who transferred to the new market, thus defeating the legislative intent providing better opportunities to the market vendors.

It was also pointed out that petitioner intentionally concealed the true nature of her business when she applied for a business and mayor's permit as her application did not in any way mention a "talipapa" or wet and perishable goods market as what was declared was merely a sari-sari store and "food and restaurant". Yet, verification made by both personnel of the business permit section as well as the office of the Sanitary Health Officer showed that petitioner was indeed operating a talipapa or wet market. Also, the building itself as well as its facilities did not conform to the environmental and sanitary standards set by laws and regulations. As a result, petitioner's application for a business permit on her Talipapa was not given favorable action and was subsequently denied.

On July 1, 2005, the Sangguniang Pambayan of Tiaong, Quezon passed Municipal Ordinance No. 2005-07 calling for the regulation in the establishment of wet/small markets (talipapa) within a radius of two (2) kilometers from the new public market at Brgy. Lalig, Tiaong, Quezon. The Sangguniang Panlalawigan of Quezon confirmed the aforementioned municipal ordinance through a resolution, Kapasiyahan Bilang 2005-543, dated August 8, 2005. Petitioner's New Talipapa was well within the radius mentioned but despite the numerous letters from the Office of the Municipal Mayor of Tiaong, Quezon asking petitioner to desist from operating her talipapa market at least until after she has complied with the requirements set forth by law, petitioner refused to heed the request and continued to operate the talipapa.

In order to protect the interests of the vast majority of his constituents particularly on health, safety and environmental concerns and invoking his authority under the General Welfare Clause of the Local Government Code, former Mayor Raul Umali issued a Closure Order dated September 11, 2007 on the premises. Before the Closure Order was implemented, petitioner filed with the court a Petition for Mandamus with Preliminary Injunction and Preliminary Restraining Order to enjoin the enforcement of the Closure Order. A 20-day Temporary Restraining Order was granted but no Writ of Preliminary Injunction was issued. However, the Closure Order was not implemented due to the agreement of the parties to maintain the status quo pending hearing on the prayer for preliminary injunction.

In the meantime, Mayor Roderick Umali was elected as the new mayor of Tiaong, Quezon and assumed office on July 1, 2010. In order to resolve once and for all the issues relative to the operation of petitioner's wet market and determine whether her application for a business permit to operate the premises as such should be given favorable action, Mayor Roderick Umali directed the head of the Municipal Environmental Office and the Office of the Municipal Health Officer to conduct inspections on the premises in the light of persistent reports of serious violations of environmental and sanitation rule and regulations in the operation of the Talipapa. Pursuant to the inspections conducted, the Offices of the Senior Environmental Specialist and the Municipal Health Office submitted their respective inspection reports where various violations of environmental and sanitary laws, ordinances and regulations were found to have been committed in the operation of the Talipapa. In particular, the discharge of solid and water waste from the market to the nearby Malaking Ilog River directly violate several DENR rules and regulations posing a serious threat on the environment and the health of the people in the immediate vicinity.

To afford petitioner an opportunity to explain her side, she was invited to a meeting at the Office of Mayor Roderick Umali. Petitioner merely denied the findings stated in the reports and even dared the mayor to effect the closure of her wet market. Hence, on July 6, 2010, Mayor Roderick Umali issued a Closure Order effective July 12, 2010 ordering all persons to vacate the premises of petitioner's building being used as stalls for the selling of wet and semi-wet consumer goods.

Mayor Roderick Umali maintains that the denial of petitioner's application for a business permit is purely discretionary, hence cannot be the subject of a mandamus, nor was there grave abuse of discretion in the said denial that would warrant the issuance of a writ of certiorari. He alleged that:

x x x

"3.3 Yet, as graphically illustrated in the photographs submitted by herein respondent during the hearing on the extension of the Temporary Restraining Order, petitioner's Talipapa has been continuously dumping effluents and other solid and water waste in the nearby Malaking Ilog River in clear violation of environmental laws and poses a serious threat to the environment and to public health. Moreover, the inspection reports of both the local Environment and Sanitation offices will bear the fact that petitioner's Talipapa for the last five years has miserably failed to meet the standards necessary for the issuance of the sanitation and environmental permits,

absolute requirements before herein respondent mayor may issue the business permit applied for;"

x x x

In her Reply to Respondent's Answer/Comment[10] she alleged that Mayor Roderick Umali's allegations in his Answer that petitioner committed serious violations of environmental and sanitation rules and regulations in the operation of Tindahan ng Bayan is a clear form of harassment so as to justify his abuse of power, authority and grave abuse of discretion in the issuance of the subject closure order. She claimed that there are two (2) sanitary permits issued for the operation of Tindahan ng Bayan, to wit: (a) Sanitary Permit for the Sari-Sari Market, and (b) Sanitary Permit for Tindahan ng Bayan, both duly signed and approved by the Municipal Health Officer and issued on May 3, 2005. Both Sanitary Permits have not been revoked prior to the issuance of the July 6, 2010 Closure Order. Petitioner accused that the Inspection Report of the Agricultural Technologist and the Inspection Report of the Sanitary Inspector are merely fabricated because they prepared the said report only one day before the Closure Order was issued on July 6, 2010. The report was not even evaluated nor approved by the Tiaong Municipal Health Officer. There was no Mission Health Order issued by the Municipal Health Officer prior to the inspection by the Sanitary Inspector which is a mandatory requirement procedure. Instead, the order to conduct inspection came from the respondent mayor and the report was submitted to him. There was no due process afforded to petitioner because she was not given the opportunity to explain her side and to comply with the corrective measures if she truly violated sanitary rules and regulations as provided by the Sanitation Code of the Philippines.

Petitioner likewise maintained that there is no violation as to the location and operation of the Tindahan ng Bayan at Punzalan St., Poblacion 1, Tiaong, Quezon. Tindahan ng Bayan is a private and commercial establishment located at the ground floor of the Rex Tower Building. It is only petitioner's Tindahan ng Bayan that is being closed by the Mayor among the many business establishments existing at Punzalan St., Poblacion 1, Tiaong, Quezon. Petitioner alleged that there is a big market called Palengke sa Daang Bakal situated at Punzalan St. corner Umali St., Poblacion 1 and yet, the mayor protected and respected the fundamental rights of the owner of the said market "Palengke sa Daang Bakal". Petitioner countered that while she is not questioning the relocation of the old public market to a far-away place at Brgy. Lalig, Tiaong, Quezon, she alleged that the mayor's allegations that petitioner's Tindahan ng Bayan rendered nugatory the legislative intent to decongest traffic is a very shallow and baseless reason to justify the closure of her business establishment.

Petitioner further claimed that her application for mayor's permit was not acted upon prior to and/or after the issuance of the Closure Order. As for the enactment of Kapasiyahan Bilang 2005-07 meant to regulate the establishment of small markets, it should be understood to not include the power to prohibit.

While awaiting the filing of the respective memorandum of the parties, the RTC issued a status quo order enjoining Mayor Roderick Umali from enforcing the closure order until the RTC could rule on the merits of the issuance of the Writ of Preliminary Injunction.

The RTC resolved petitioner's prayer for the issuance of a Writ of Preliminary Injunction embedded in her Petition for Certiorari and/or Prohibition and/or Mandamus through its Order dated August 3, 2011, denying the same on the ground that the petition was intrinsically deficient to obtain the provisional relief sought. It ruled that:

x x x

"Besides, the issuance of the writ of Preliminary Injunction, petitioner seeks the following relief:

(a) the issuance of a Temporary Restraining Order;

(b) for respondent to act on her application for a business permit to operate her business, and

(c) for damages.

"However, the records would readily show that the first two relief being sought have been rendered moot when this Court granted the Temporary Restraining Order and respondent mayor denied petitioner's application for a permit leaving only the prayer for damages as the only issue to be resolved in the main case.

"Since all the relief sought by petitioner other than her prayer for damages have already been acted upon, should the prayer for the writ of preliminary injunction be granted, a mere ancillary remedy whose lifetime is co-terminus with the pendency of the main case, it would in effect dispose of the main case without trial as there would be no other issue to be resolved."

x x x

In her Motion for Reconsideration, petitioner alleged that she had fully established grounds to justify the issuance of the Writ of Preliminary Injunction as shown by the following:

1) Respondent violated and continuously violates the fundamental rights of herein plaintiff which is a clear and positive right by closing her talipapa or small wet market without affording her due process of law, and in denying her application for business permit without valid grounds;

2) There exists irreparable injury that would warrant protection by a writ of preliminary injunction;

3) Respondent mayor acted with grave abuse of discretion amounting to lack or excess of jurisdiction;

4) Petitioner was not afforded due process of law prior to the issuance of Closure Order, and she did not violate any Sanitary Rules or Regulation;

5) Petitioner did not violate any ordinance, national and local laws.

In its Order dated May 7, 2012, the RTC denied petitioner's Motion for Reconsideration for being a mere rehash of the matters already discussed in the Order sought to be reconsidered.

Hence this petition.

### **THE ISSUES BEFORE US**

Petitioner raised the following grounds for the allowance of the petition for certiorari, to wit:

THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT ISSUED ITS ORDERS DATED AUGUST 03, 2011 AND MAY 7, 2012, DENYING PETITIONER'S PRAYER FOR WRIT OF PRELIMINARY INJUNCTION. SPECIFICALLY:

1. WHEN IT RULED THAT THE PRAYER FOR ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION IS ALREADY MOOT AND ACADEMIC;

2. WHEN IT RULED THAT THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION WILL EFFECTIVELY RESULT IN DISPOSING OF THE MAIN CASE; AND

3. WHEN IT DENIED THE PRAYER FOR ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION DESPITE THE PRESENCE OF ALL REQUISITES WARRANTING ISSUANCE UNDER RULE 58 OF THE RULES OF COURT.

Private Respondent Mayor Roderick C. Umali reiterated in his Comment that only those relief prayed for by the party litigant could be granted by the court and that even the general prayer for other just and equitable relief cannot be deemed as an alternative to any specific prayer not stated.

### OUR RULING

The central question in this petition is whether petitioner is entitled to the issuance of a Writ of Preliminary Injunction while her Petition for Certiorari and/or Mandamus is still being heard by the RTC. This being so, We shall only deal with the issue of the propriety of such an issuance without delving into the merits of the case pending before the RTC.

A Preliminary Injunction is an order granted at any stage of an action prior to final judgment, requiring a person to refrain from a particular act. It is merely temporary, subject to the final disposition of the principal action.[11]

The RTC denied petitioner's prayer for a Writ of Preliminary Injunction on the ground that the relief sought has been rendered moot and academic when the court granted the Temporary Restraining Order and the respondent Mayor denied petitioner's application for business permit.

Petitioner argues that it was grave abuse of discretion on the part of the public respondent to literally interpret the reliefs prayed for in the petition without taking into account the allegations and evidence adduced in support thereof. A perusal of the allegations in the petition for certiorari, prohibition and mandamus principally questions the validity of the Closure Order dated July 6, 2010 for being issued by the respondent Mayor with grave abuse of discretion amounting to lack or excess of jurisdiction. Contrary to the apprehension of the RTC that the issuance of a Writ of Preliminary Injunction would effectively dispose of the main case, the following issues remain to be resolved during the trial on the merits, to wit:

- (i) whether the closure order is void;
- (ii) whether the denial of petitioner's application for business permit is void;
- (iii) whether respondent Mayor reneged on his legal duty to act on petitioner's application, and thus must be directed to act thereon;
- (iv) whether respondent Mayor should be held liable for damages suffered by petitioner.

In the Petition filed before the RTC, petitioner prayed for the following reliefs, to wit:

x x x

"WHEREFORE, premises considered, it is respectfully prayed that:

1. A WRIT OF PRELIMINARY INJUNCTION be issued to refrain Respondent Mayor Roderick A. Umali from enforcing the Closure Order dated July 6, 2010;
2. Pending Issuance of a Writ of Preliminary Injunction, a Temporary Restraining Order be issued to enjoin

Respondent Mayor Roderick A. Umali from physically closing the building and stopping the operation of the Tindahan ng Bayan inside the said building for there is no appeal or any other plain speedy and adequate remedy in the ordinary course of law, except the granting of the instant petition for certiorari, prohibition and/or mandamus with prayer for a writ of preliminary injunction and a temporary restraining order.

[3]. Ordering Respondent Mayor Roderick A. Umali to act on petitioner's application for a business permit to operate the so called Tindahan ng Bayan at the 108 Square Meters of the ground floor of Rex Tower Bldg. Punzalan St., Poblacion 1, Tiaong, Quezon.

4. Judgement (sic) be rendered commanding the respondent to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

"Such other relief just and equitable under the premises are likewise prayed for."

X X X

It appears from a literal reading of the prayer that the ultimate relief sought by petitioner is for respondent mayor to act on her application for a business permit, which respondent mayor pointed out he already did by denying the same, rendering the said prayer moot and academic.

However, it is apparent from a reading of the allegations in the petition that what the petitioner questions is both the denial of her application for a business permit and the issuance of a closure order, to wit:

X X X

"1-a. Petitioner's fundamental rights to use her property and engage in business and/or operate business in her own private property which had been operating and existing since 2005 until the present are being violated by respondent by means of (1) denying the petitioner's business permit and (2) by issuing a CLOSURE ORDER." [12]

X X X

Hence, despite the issuance of a Temporary Restraining Order and the denial of her business permit, the issue of whether she should be issued a business permit, is still unresolved. Petitioner's prayer that the mayor be ordered to act on her application for a business permit to operate should not be taken too literally as would mean any act, as it was clear from the allegations of the petitioner that she wanted a favorable action on her application.

The general prayer "such other relief just and equitable under the premises are likewise prayed for" is broad enough to justify extension of a remedy different from or together with the specific remedy sought. Even without the prayer for a specific remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant. [13] Hence, even if the RTC resolves the issue of whether petitioner is entitled to a Writ of Preliminary Injunction, there still remains issues to be resolved in the main case.

Nevertheless, since the justification for the Preliminary Injunction is urgency, instead of remanding this case for the disposition of the issue of the propriety of the issuance of a Writ of Preliminary Injunction, We deem it wise to rule on the same based on the evidence so far presented by the parties.

The issuance of a Writ of Preliminary Injunction is based on evidence tending to show that the action complained of must be stayed lest the movant suffer irreparable injury or the final judgment granting this relief sought become ineffectual. [14] Necessarily, that evidence need only be a "sampling", as it were, and intended merely to give the court an idea of the justification for the Preliminary Injunction pending the decision of the case on the merits. The evidence submitted at the hearing on the motion for the Preliminary Injunction is not conclusive of the principal action, which has yet to be decided. [15]

Section 3, Rule 58 of the Rules of Court provides for the grounds for the issuance of a Writ of Preliminary Injunction, to wit:

x x x

“Section 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.”

x x x

For a Writ of Preliminary Injunction to issue, the following requisites must be present: (1) the existence of a clear and unmistakable right that must be protected, and (2) an urgent and paramount necessity for the writ to prevent serious damage.[16]

As with all equitable remedies, injunction must be issued only at the instance of a party who possesses sufficient interest in or title to the right or the property sought to be protected. It is proper only when the applicant appears to be entitled to the relief demanded in the complaint, which must aver the existence of the right and the violation of the right, or whose averments must in the minimum constitute a prima facie showing of a right to the final relief sought.[17]

Accordingly, the conditions for the issuance of the injunctive writ are: (a) that the right to be protected exists prima facie; (b) that the act sought to be enjoined is violative of that right; and (c) that there is an urgent and paramount necessity for the writ to prevent serious damage.[18]

A clear and positive right especially calling for judicial protection must be shown. Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not in esse and which may never arise, or to restrain an act which does not give rise to a cause of action,[19] or to prevent the perpetration of an act prohibited by statute.[20] There must exist an actual right.[21] A right, to be protected by injunction, means a right clearly founded on or granted by law or is enforceable as a matter of law.[22] There must be a patent showing by the complaint that there exists a right to be protected and that the acts against which the writ is to be directed are violative of said right.[23]

In this regard, petitioner has failed to show even a prima facie evidence of her right in esse that must be protected. Petitioner purports to her right to earn a living, her right to use and protect her property and her right to engage in a free enterprise by operating Tindahan ng Bayan. It is beyond cavil that mayors have the authority to issue or grant licenses and business permits as a valid exercise of police power. A business permit authorizes the person, natural or otherwise, to engage in business or some form of commercial activity.[24] In this case, petitioner admitted to not having a mayor's permit just yet, because of the mayor's refusal to act on her application for one. This is precisely one of the reliefs prayed for by the petitioner in her petition for certiorari and/or mandamus pending with the RTC. At this point, petitioner has not sufficiently shown that she has the right to operate her talipapa despite the lack of a mayor's permit.

While it is true that the Closure Order was anchored on a quite general allegation of violations of existing national and local laws, ordinances and the Code of Sanitation of the Philippines, still, the petitioner has the burden to show, in the first place, that she had a right in esse that was violated by private respondent's act of issuing the assailed Closure Order. Petitioner failed to prima facie show that despite the mayor's refusal to act on her application for a mayor's permit, she had a clear right to operate her business.

Petitioner likewise failed to impress Us that there is an urgent and paramount necessity for the issuance of the writ to prevent serious damage.

Injunctive remedy may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation.[25] The applicant must prove that the violation sought to be prevented would cause an irreparable injustice.[26]

It is a settled view that the term “irreparable injury” has a definite meaning in law. It does not have reference to the amount of damages that may be caused but rather to the difficulty of measuring the damages inflicted. If full compensation can be obtained by way of damages, equity will not apply the remedy of injunction.[27] An injury is considered “irreparable” if it is of such constant and frequent recurrence that no fair or reasonable redress can be had therefor in a court of law, or where there is no standard by which their amount can be measured with reasonable accuracy, that is, it is not susceptible of mathematical computation.[28]

Here, the damages that petitioners alleged to suffer with the closure of her talipapa is the loss of income therefrom, which is quantifiable, and purely monetary and compensable. It is not the irreparable injury contemplated by the rules to warrant the issuance of a Writ of Preliminary Injunction.

The very foundation of the jurisdiction to issue writ of injunction rests in the existence of a cause of action and in the probability of irreparable injury, inadequacy of pecuniary compensation and the prevention of the multiplicity of suits. Where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.

It has been consistently held that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.[29] An injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.[30]

WHEREFORE, premises considered, the petition is DISMISSED for lack of merit.

**SO ORDERED.**

Salazar-Fernando, R.A., Chairperson, and Gonzales-Sison, M., JJ., concur.

---

[1] Rollo, pp. 35-38.

[2] Id., p. 39.

[3] Id., p. 40.

[4] Id., p. 115.

[5] Id., pp. 177-178.

[6] Id., pp. 179-180.

[7] Id., p. 120.

[8] Id., p. 75.

[9] Id., pp. 90-101.

[10] Id., pp. 122-131.

[11] Olalia v. Hizon, G.R. No. 87913, May 6, 1991.

[12] Petition, p. 9, at Rollo, p. 67.

[13] United Overseas Bank of the Philippines (Formerly Westmont Bank) v. Rosemoor Mining and Development Corp., et al., G.R. No. 172651, October 02, 2007, citing Eugenio, Sr. v. Velez, G.R. No. 85140, 17 May 1990, 185 SCRA 425, 432-433.

[14] See note 11.

[15] Ibid.

[16] Philippine National Bank v. RJ Ventures Realty & Development Corp. and Rajah Broadcasting Network, Inc., G.R. No. 164548, September 27, 2006, citing Manila International Airport Authority v. Court of Appeals, 445 Phil. 369, 382 (2003), citing Ong Ching Kian Chuan v. Court of Appeals, 415 Phil. 365, 374 (2001); See also Republic of the Philippines v. Hon. Victorino Evangelista, G.R. No. 156015, 11 August 2005, 466 SCRA 544, 553.

[17] Bank of the Philippine Islands v. Hontanosas, Jr., et al., G.R. No. 157163, June 25, 2014, citing City Government of Butuan v. Consolidated Broadcasting System (CBS), Inc., G.R. No. 157315, December 1, 2010.

[18] Id. citing City Government of Butuan v. Consolidated Broadcasting System (CBS), Inc., G.R. No. 157315, December 1, 2010.

[19] Levi Strauss & Co. et al. v. Clinton Apparelle, Inc., G.R. No. 138900, September 20, 2005, citing Republic of the Philippines v. Judge Villarama, Jr., 344 Phil. 288, 302-303 (1997).

[20] Bank of the Philippine Islands v. Hontanosas, Jr., et al., supra., citing City Government of Butuan v. Consolidated Broadcasting System (CBS), Inc., G.R. No. 157315, December 1, 2010.

[21] Levi Strauss & Co. et al. v. Clinton Apparelle, Inc., supra., citing Republic of the Philippines v. Judge Villarama, Jr., 344 Phil. 288, 302-303 (1997).

[22] Bank of the Philippine Islands v. Hontanosas, Jr., et al., supra., citing City Government of Butuan v. Consolidated Broadcasting System (CBS), Inc., G.R. No. 157315, December 1, 2010.

[23] Levi Strauss & Co. et al. v. Clinton Apparelle, Inc., supra. citing Government Service Insurance System v. Florendo, G.R. No. 48603, 29 September 1989; National Power Corporation v. Vera, G.R. No. 83558, 27 February 1989, 170 SCRA 721, 727.

[14] Acebedo Optical Company, Inc. v. Court of Appeals, et al., G.R. No. 100152, March 31, 2000.

[15] Philippine National Bank v. RJ Ventures Realty & Development Corp. and Rajah Broadcasting Network, Inc., supra., citing Almeida v. Court of Appeals, G.R. No. 159124, 17 January 2005, 448 SCRA 681, 703.

[16] Bank of the Philippine Islands v. Hontanosas, Jr., supra., citing Los Baños Rural Bank, Inc. v. Africa, G.R.

No. 143994, July 11, 2002, 384 SCRA 535; see also *Power Sites and Signs, Inc. v. United Neon, G.R. No. 163406*, November 24, 2009, 605 SCRA 196, 208.

[17] *Philippine National Bank v. RJ Ventures Realty & Development Corp. and Rajah Broadcasting Network, Inc.*, supra., citing *Social Security Com. v. Hon. Bayona*, 115 Phil. 106, 111 (1962), citing 28 Am. Jur., 244 and 43 C.J.S., 427, 446.

[18] *Bank of the Philippine Islands v. Hontanosas, Jr., et al.*, supra. citing *Philippine National Bank v. Castalloy Technology Corporation*, G.R. No. 178367, March 19, 2012.

[19] *Olalia v. Hizon*, supra., citing *Sales v. Securities & Exchange Commission*, 169 SCRA 109; *Buayan Cattle Co., Inc. v. Quintillan*, 128 SCRA 276.

[20] Id.

**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.