

**ANTONIO S. ASCAÑO, JR., CONSOLACION D. DANTES, BASILISA A. OBALO, JULIETA D. TOLEDO, ERIC S. PASTRANA, JOSEPH Z. MAAC, EMILIANO E. LOMBOY, TITA F. BERNARDO, IGMEDIO L. NOGUERA, ...**

Ponente: CORALES, J.

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**CORALES, J.:**

This is a Petition for Certiorari and Prohibition[1] with prayer for the issuance of temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) assailing the July 2, 2012 Order[2] of the Regional Trial Court, Branch 46, San Jose, Occidental Mindoro (RTC) declining to extend the seventy two (72) hours TRO earlier issued in Special Civil Action No. R-1731 entitled “Antonio Ascaño Jr., Consolacion Dantis, Basilisa Obalo, Julieta Toledo, Eric S. Pastrana, Joseph Z. Maac, Aurora M. Francisco, Emiliano E. Lumboy, Tita F. Bernardo, Igmedio L. Noguera, Avelina Colonia, and Marivel B. Ison v. The Municipality of San Jose, Occidental Mindoro, and Hon. Mayor Jose T. Villarosa”.

**The Antecedents**

Petitioners Antonio Ascaño, Jr., Consolacion D. Dantes,[3] Basilisa Obalo, Julieta Toledo, Eric S. Pastrana, Joseph Z. Maac, Aurora M. Francisco, Emiliano E. Lumboy, Tita F. Bernardo, Igmedio L. Noguera, Avelina Colonia, and Marivel B. Ison are allegedly lessees of market stalls in San Jose, Occidental Mindoro Public Market (public market). On June 19, 2012, they filed a petition for prohibition with urgent application for the issuance of TRO and WPI[4] against Mayor Jose T. Villarosa (Mayor Villarosa) and the Municipality of San Jose (Municipality) for collecting “goodwill fee”, threatening to evict petitioners from their market stalls, demolishing the existing public market, and constructing a modern commercial market building.

Petitioners alleged that upon his assumption to office, Mayor Villarosa immediately informed the market lessees of his plans to construct a modern public market and that each lessee should pay a P200,000.00 “goodwill fee” per stall, including a 25% downpayment, in order to preserve their rights to the rented space. Mayor Villarosa also clarified that those vendors who pay their spaces by tickets, commonly referred to as “squatters”, have no space in the proposed modern commercial building. In November 2011, he called for a meeting inside the public market and announced that each market lessee should pay tickets, permits, and monthly dues, otherwise, they will be evicted by February 2012. With the turn of events, petitioners sought an audience with Occidental Mindoro Governor Josephine Y. Ramirez-Sato (Gov. Ramirez-Sato) to express their concerns regarding Mayor Villarosa's plans for the public market. While the meeting with Gov. Ramirez-Sato was going on, Mayor Villarosa publicly announced that all those present in the meeting will not be given any stall/space in the new market complex.

Petitioners further averred that on March 6, 2012, Mayor Villarosa caused the circulation of a notice entitled “Pabatid / Palibot-Lihim”,[5] which was addressed to “lahat ng mga nakapwestong may negosyo” and “lahat ng mga naninirahan” at the Magsaysay Parking Area, informing them of the imminent start of the construction of the “Bagong Pamilihang Bayan (New Public Market)” and giving the occupants two (2) weeks to vacate the premises. On June 1, 2012, the Municipal Administrator supposedly sent to market lessees notices for the

temporary relocation of their stalls in view of the upcoming construction of the San Jose Commercial Complex.[6] Thus, some of the market lessees were prompted to pay the “goodwill fees” under protest.[7] Subsequently, demolition started despite the objection of over 600 market lessees who signed a “Pahayag ng Pagtutol ng Alyansa ng mga Manininda at Mangangalakal sa San Jose Public Market Laban sa Banta ng Demolisyon para sa Pagtatayo ng San Jose Commercial Complex ng Pamahalaang Bayan ng San Jose sa Pamumuno ni Mayor Jose Tapales Villarosa” (Pahayag).[8]

The petition further alleged that the collection of “goodwill fees” had already been disapproved by the Sangguniang Panlalawigan of Occidental Mindoro through its Resolution No. 59,[9] series of 2012 while the intended demolition of the public market and the planned construction of the San Jose Commercial Complex in its stead is without any valid authority, done in utter bad faith and in total disregard of petitioners right to due process, and would cause serious irreparable injuries to the market vendors and the government.

To bolster their cause, petitioners submitted their sworn statements;[10] a June 1, 2012 notice to vacate;[11] receipts for payments of “reservation/goodwill fees”;[12] and copies of their Pahayag.[13] They also presented a copy of Sangguniang Panlalawigan Resolution No. 59[14] which reiterated the stand of the provincial government to disapprove Ordinance No. 764, series of 2011 of the Sangguniang Bayan ng San Jose, entitled “An Ordinance Prescribing the Rate of Rental Fee and Imposition of Goodwill Fee/Option to Lease for the Occupation of Aroma Café Building and Premises, and Stalls at the Acacia Park, Aroma Beachwalk and the Proposed San Jose Commercial Complex”.

On June 27, 2012, Judge Jacinto issued a 72-hour TRO[15] enjoining Mayor Villarosa, the Municipality, and any of their representatives, agents or persons acting on their behalf to refrain from proceeding with the collection of the disapproved “goodwill fees”, the eviction of the petitioners from their leased stalls/spaces, the demolition of the present public market and the construction of the proposed commercial complex during the said period unless otherwise ordered by the court.

However, after the July 2, 2012 hearing for the application of the WPI, the RTC issued the assailed Order[16] which reads:

After the manifestation and counter-manifestation of the petitioners' counsel and the respondents' counsel for a continuance and considering that the Temporary Restraining Order (TRO) which is for seventy two (72) hours and which (sic) shall last up to 5:00 o'clock this afternoon, on the basis of the initial testimony of this first witness by the petitioners, the Court is not inclined to extend for seventeen (17) days the said TRO counted from today but the hearing on the prayer for a TRO and conversion of the same shall continue and hereby set tomorrow, July 3, 2012 at 2:00 o'clock in the afternoon.

SO ORDERED. (Emphasis supplied)

Unfazed, petitioners filed the instant petition for certiorari anchored on this ground:

THE ASSAILED ORDER WAS ISSUED WITHOUT OR IN EXCESS OF JURISDICTION, IN FLAGRANT VIOLATION OF THE PETITIONERS' FUNDAMENTAL AND CONSTITUTIONAL RIGHT TO DUE PROCESS, AN OPPRESSIVE TRANSGRESSION OF A CLEAR CONSTITUTIONAL GUARANTEE, AND IN ISSUING THE SAID ORDER, THE HON. PUBLIC RESPONDENT JUDGE ACTED WITH GRAVE ABUSE OF DISCRETION, TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION.

Parenthetically, petitioners invoke the exceptions to the rule that a motion for reconsideration is a condition sine qua non to a petition for certiorari. They claim that the motion for reconsideration is a futile technicality that would only cause further delay in the proceedings which would prejudice their interest considering that they have been deprived of their fundamental right to due process and time is of the essence in this petition.[17]

Petitioners argue that Judge Jacinto abused his discretion when he disregarded the un rebutted testimonies and evidence they presented to prove their entitlement to the issuance of a TRO. The testimonies of their witnesses had allegedly established their rights as lawful possessors of the market stalls which have been illegally disturbed and threatened by Mayor Villarosa without due process of law. According to them, the construction of a new commercial complex to replace the present public market, which is being gradually demolished, is neither supported by any approved resolution and budget appropriation nor compliant with the requirements of law. They further claim to suffer irreparable and serious injuries from the demolition of the existing public market and aver that such action on the part of the Municipality would only cause imminent danger of violence, chaos, tumult, mayhem or bloodshed.

They also impute bias, prejudice, and partiality against Judge Jacinto allegedly demonstrated by his following conducts: he actively and personally examined witnesses Toledo and Santos; he excluded from the courtroom the other petitioners while their witness and co-petitioner took the stand; he disregarded Toledo's claims that she had "inherited" her present market space from her mother and grandmother, had obtained all the necessary documents and paid the appropriate fees for the stall she is occupying; he gave Mayor Villarosa and the Municipality a very long 30-day period within which to file their position paper on the merits of petitioners' application for injunctive relief; and he reset the hearing to September 14, 2012.[18]

On the other hand, Mayor Villarosa and the Municipality failed to file their comment on the petition and memorandum of authorities despite notice.[19]

#### This Court's Ruling

The petition fails.

Preliminarily, the Court agrees with petitioners that the arguments advanced in this petition were essentially the same contentions duly raised and resolved in the proceedings a quo. The case clearly falls within the jurisprudentially recognized exceptions to the rule that a motion for reconsideration is a prerequisite for a petition for certiorari, such as: (a) when the order is a patent nullity; (b) the questions raised in the certiorari proceeding were duly raised and passed upon by the lower court; (c) there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the government or of the petitioner, or the subject matter of the action is perishable; (d) under the circumstances, a motion for reconsideration would be useless; (e) petitioner was deprived of due process and there is extreme urgency for relief; (f) in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) the proceedings in the lower court are a nullity for lack of due process; (h) the proceedings were ex parte, or afforded the petitioner no opportunity to object; or (i) the issue raised is purely one of law or where public interest is involved.[20]

#### No Grave Abuse of Discretion; Clear, Legal Right Not Proven

A TRO is an injunctive relief and preservative remedy for the protection of substantive rights and interests of the parties.[21] Being in the same nature as an injunction,[22] an application for TRO may also be granted upon showing that (1) there exists a clear and unmistakable right to be protected; (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.[23]

Under Section 5, Rule 58[24] of the Rules of Court, a TRO may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the writ of preliminary injunction could be heard. Such injury should also be established to warrant the extension of a 72-hour TRO into a maximum period of twenty (20) days.

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 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.[25]

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. The burden is thus on petitioners to show in their application that there is meritorious ground for the issuance of an injunction in their favor.[26]

Guided by the foregoing principles, this Court finds no reason to interfere with the decision of the court a quo. No grave abuse of discretion could be attributed to the RTC in not extending the 72-hour TRO because not all the elements required for the issuance of the same are present at the time of the hearing for its extension.

Petitioners failed to prove their right in esse that should be protected by the court as well as the acts allegedly violative of this right against which the injunction sought is to be directed. A right in esse is a clear and unmistakable right to be protected, one clearly founded on or granted by law or is enforceable as a matter of law.[27] As shown by the records, at the time of the hearing for the extension of the 72-hour TRO, petitioners did not adduce any evidence to prove their claimed right to the continued possession of the property or operation of their business thereon. Although the petition contains a reference to a Mayor's Permit, DTI Permit, Barangay Business Permit, and various other documents allegedly supporting at least one of the petitioners' right to retain their market space, these documents have not been produced.[28] Mere allegation is not proof.[29] Similarly, the supposed lack of authority or basis for the acts sought to be enjoined is a mere allegation without proof, thus, it falls short of the required quantum of evidence in granting a TRO.

It bears stressing that a TRO is not designed to protect contingent or future rights. Even the possibility of irreparable damage, without proof of actual existing right, is not sufficient ground for the issuance of a TRO.[30] Where the applicant's right or title is doubtful or disputed, he fails to show a clear, positive, and unmistakable legal right deserving protection through the issuance of injunctive relief.[31]

In the same vein, petitioners failed to substantiate their claim that Judge Jacinto exhibited bias in favor of Mayor Villarosa. In the absence of competent evidence to support such allegations of partiality and bias,[32] the presumption that the judge regularly performed his official duties must be upheld.[33]

Given the foregoing, the RTC could not have committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its July 2, 2012 Order.

WHEREFORE, the instant petition is hereby DISMISSED and the prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction is DENIED for lack of merit.

**SO ORDERED.**

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

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[1] Rollo, pages 3-50.

[2] Penned by Acting Presiding Judge Jose S. Jacinto, Jr., *ibid.*, page 51.

[3] Also referred in some parts of the records as "Consolacion Dantis".

[4] Rollo, pages 53-67.

[5] Ibid., page 76.

[6] See June 1, 2012 letter of the Municipal Administrator Jaime E. dela Cruz addressed to a certain Leila Serna, *ibid.*, page 93.

[7] See May 29 and June 8, 2012 Certificates and Official Receipt No. 2484695, *ibid.*, pages 94-96.

[8] *Ibid.*, pages 97-112.

[9] Rollo, pages 117-119.

[10] See Marivel B. Ison's Sinumpaang Reklamong-Salaysay; Aurora M. Francisco, Emiliano E. Lumboy, and Tita F. Bernardo's Pinagsamang Sinumpaang-Salaysay; Igmedio L. Noguera's Sinumpaang-Salaysay; Fidel Sarmiento Sr., Dan Taunan, and Amalia G. Santos's Pinagsamang Sinumpaang-Salaysay; Eric S. Pastrana and Joseph Z. Maac's Pinagsamang Sinumpaang Salaysay; Avelina Colonia's Sinumpaang Salaysay; and Antonio Ascaño, Jr., Basilisa Obalo, Consolacion Dantis, and Julieta Toledo's Pinagsamang Sinumpaang-Salaysay, *ibid.*, pages 69, 70 72, 73-74, 83, 85, and 87-88, respectively.

[11] Rollo, pages 93-95.

[12] *Ibid.*, page 96.

[13] *Supra*, at note 8.

[14] *Supra*, at note 9.

[15] Rollo, page 52.

[16] *Supra*, at note 2.

[17] See Petition for Certiorari, *supra*, at note 1.

[18] See Julieta dela Cruz Toledo's Sinumpaang Salaysay; Marivel B. Ison's Affidavit-Complaint; Amalia G. Santos' Affidavit-Complaint; Emiliano E. Lomboy and Avelina M. Colonia's Pinagsamang Sinumpaang Salaysay; Antonio S. Ascaño, Jr., Basilisa A. Obalo, Eric S. Pastrana, Joseph Z. Maac, and Fidel Sarmiento's Pinagsamang Sinumpaang-Salaysay, rollo, pages 126-132, 133-135, 136-137, 140-142, and 143-146, respectively.

[19] See August 29, 2012, October 23, 2012, January 24, 2013, February 12, 2013, March 25, 2013 and January 27, 2014 Resolutions, May 22, 2013 Certification, and Manifestation cum Urgent Motion, *ibid.*, pages 200, 206, 230-233, 254, 269, 283-285, 278, and 234-252, respectively.

[20] See *Siok Ping Tang v. Subic Bay*, G.R. No. 162575. December 15, 2010.

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

[22] See *Brizuela v. Dingle*, G.R. No. 175371. April 30, 2008.

[23] See *Australian Professional v. Municipality of Padre Garcia*, *supra*, at note 21.

[24] Rules of Court, Rule 58, Sec. 5. Preliminary injunction not granted without notice; exception.--xxx If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue ex parte a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. xxx

However, subject to the provisions of the preceding sections, if the matter is of extreme urgency and the applicant

will suffer grave injustice and irreparable injury, the executive judge of a multiple-sala court or the presiding judge of a single-sala court may issue ex parte a temporary restraining order effective for only seventy-two (72) hours from issuance, but shall immediately comply with the provisions of the next preceding section as to the service of summons and the documents to be served therewith. Thereafter, within the aforesaid seventy-two (72) hours, the judge before whom the case is pending shall conduct a summary hearing to determine whether the temporary restraining order shall be extended until the application for preliminary injunction can be heard. xxx (Emphasis supplied)

[25] See *Australian Professional v. Municipality of Padre Garcia*, supra, at note 21.

[26] Ibid.

[27] *Lim v. BPI Agricultural Development Bank*, G.R. No. 179230. March 9, 2010.

[28] See *Julieta dela Cruz Toledo's Sinumpaang Salaysay*, rollo, pages 126-132.

[29] See *Real v. Belo*, G.R. No. 146224. January 26, 2007.

[30] See *Brizuela v. Dingle*, supra, at note 22, citing *Heirs of Asuncion v. Gervacio*, G.R. No. 115741. March 9, 1999.

[31] See *Incorporators v. United Church of Christ*, G.R. No. 171765. March 21, 2012.

[32] See *Dulay v. Lelina*, A.M. No. RTJ-99-1516. July 14, 2005.

[33] See *Monticalbo v. Maraya*, A.M. No. RTJ-09-2197. April 13, 2011.

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