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Ponente: BALTAZAR-PADILLA, J.

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BALTAZAR-PADILLA, J.:

At hand is petitioners' Motion for Partial Reconsideration seeking to reverse OUR Decision dated August 29, 2014 which denied their petition for a writ of kalikasan.

In support of their motion, petitioners argue that this Court failed to state its reason for its finding that the petition does not involve an environmental damage of such magnitude as required by the Rules of Procedure for Environmental Cases (RPEC). They insist that the measures which Ecoshield Development Corporation (EDC) will undertake to mitigate the environmental threats posed by the establishment of the landfill do not negate the environmental damage requirements of Section 1, Rule 7 of the RPEC.

They contend that the magnitude requirement under the RPEC refers to the geographic scope of at least two cities or provinces. This requirement was readily met as evident from this Court's description of the activities associated with the project in various parts of the questioned Decision. In fact, the manner of transport of wastes planned for the landfill from Manila to Obando by barge would traverse the jurisdictions of the cities of Manila, Malabon and Navotas and the province of Bulacan, thus, meeting the magnitude requirement. They are surprised how this Court failed to appreciate this, given the degree of environmental hazard inherent to the project as a landfill and the scope of its geographic impact considering that the ecosystem under threat is Manila Bay, which is a body of water that is shared by several cities and provinces.

Petitioners are also insistent that the project landfill should have undergone the EIS process. They assert that the Revised Procedural Manual to DAO 2003-30 cannot supersede DAO 2006-10. The authority for the Manual is from a DAO. This indicates that the former is inferior to the latter. Further, the Manual is issued by a mere EMB National Director whereas DAO 2006-10 was issued by the late Angelo Reyes in his capacity then as both DENR Secretary and Chair of the National Solid Waste Management Commission which is specifically tasked by RA 9003 to formulate policies on solid waste management. Also, nowhere in PD 1586, DAO 2003-30 or any law for that matter is the EMB National Director granted the power to repeal DAOs issued by the DENR Secretary. The repealing clause in the foreword of the Manual should be confined only to legal instruments within the same rank or below, never above. At any rate, this Court is not required to abide by the clause stating the repeal of "earlier IRRs of PD 1586" as the same is patently ultra vires.

Petitioners likewise point out that the Revised Procedural Manual cannot amend DAO 2006-10 as the former deals with procedural guidelines on the EIS system in general while DAO 2006-10 specifically refers to landfills and the legal requirements in relation to PD 1586.

Petitioners add that the power to develop and prescribe procedures for the issuance of appropriate permits and

clearances belongs to the NSWMC, not the EMB Director. As per the guidelines under NSWMC Resolution No. 6 dated December 15, 2005, DAO 2006-10 specifically prescribed the preparation of an EIS for Category 4 landfills with a waste capacity of 1000 metric tons per day and above. The subject sanitary landfill squarely falls under this bracket.

Considering that an EIS was required for this project, petitioners argue that a public hearing for ECC purposes was mandatory. This was never met because all the public gatherings conducted occurred either before the ECC application was submitted on December 13, 2010 or after the time it was actually issued on December 22, 2010. Petitioners further assert that this is not the only venue for public consultation/hearing. It is a policy of the State to “institutionalize public participation in the development and implementation of national and local integrated, comprehensive and ecological waste management programs” and the conduct of “mandatory public hearings for local government solid waste management plans”.

Further, reclassification of agricultural lands may be authorized through an ordinance enacted after conducting public hearings for the purpose. In this case, Municipal Ordinance No. 07-08 of the SB of Obando which approved the reclassification of the area was passed on February 28, 2011. While public hearing was held two weeks earlier on February 14, 2011, it was rendered meaningless by the fact that as early as February 7, 2011, the SB had already allowed the land reclassification by virtue of Kapasiyahan Blg. 07-105.

Petitioners likewise contend that while petitioner Bondoc was invited to attend gatherings related to the landfill project, whether she was heard is still doubtful.

Petitioners also asseverate that the land reclassification was faulty. They maintain that the Executive Committee of the Municipal Development Council cannot usurp the powers pertaining to the whole council. The irregularity in the land reclassification is further highlighted by the fact that only five (5) hectares were allowed by the DAR to be converted but the Municipality of Obando allowed all of 44 hectares to be reclassified, contrary to MC 54. Also, the reclassification ordinance was passed even before the other required clearances of MC 54 were issued.

It is also pointed out by petitioners that the subject area is not suited for a landfill. This Court ignored Section 1(m)(2) of Rule XIV of DAO 2001-34 that a landfill cannot be situated in a floodplain. Whether the engineering solutions of EDC are sufficient is immaterial on this matter. The fact remains that the landfill is still located in a floodplain, thus, in contravention with the siting requirements of the law.

Petitioners question this Court's giving more credence to EDC's evidence while downplaying the credibility of their witnesses for not having seen EDC's documents or not presenting to court what one of their witnesses actually read to support their cause.

The fact that petitioners' witnesses did not get to review the actual documents of EDC only bolsters the allegation of defect in the procedure undertaken by the DENR and EMB to allow the landfill to proceed. Nobody had access to these documents but them.

According to petitioners, Dr. David was appointed and actually sat as a member of an EIS Review Committee in EMB-Region III, and for a landfill project. They wonder how and why this project is given lenient treatment by only requiring an IEE, given the magnitude of its potential environmental impacts.

Also, while Dr. Solidum did not show the documents he studied, this Court admitted him as an expert witness. The EGGAR submitted by EDC clearly shows that the area is prone to liquefaction if a strong earthquake should occur and Dr. Solidum testified that none of the measures enumerated by EDC can prevent liquefaction in horizontal structures like a landfill.

Finally, petitioners disagree with this Court's finding that the landfill is in accord with the Supreme Court's ruling in the MMDA case. This project does not address the root causes of the problem. The wastes from the river are merely transferred into a portion of Manila Bay. Allocating a mere portion of the proposed landfill is a short-term measure and is unsustainable. This Court was never informed of any solution once EDC's landfill has reached its capacity.

By way of Comment, public respondents Secretary Paje and Regional Director Claudio pray for the denial of the motion considering that the issues raised therein are mere rehash of those which were considered and resolved by this Court in the challenged Decision.

They also argue that since this Court acted as a trial court in this case, notice of hearing is mandatory as per Sections 4 and 5 of Rule 15 of the Rules of Court. In the present case, the instant motion lacks notice of hearing, hence, the same is a pro forma motion warranting its denial.

Public respondents Mayor Gabriel, Sangguniang Bayan of Obando, Bulacan and Sangguniang Barangay of Salambao, Obando, Bulacan likewise seek denial of the instant motion. They contend that this Court committed no reversible error in issuing the Decision in question. The issues raised were all comprehensively passed upon by this Court.

In addressing the matters interposed in the motion, public respondents maintain that the reclassification of the subject land is proper and valid. EDC had submitted all the required documents in support of its application for conversion or reclassification. The SB of Obando likewise found the land to be no longer viable for fishing and would have greater economic value for industrial/commercial purposes since it ceased to be economically feasible and sound for agricultural use.

As to the issue on the authority of the Executive Committee of MDC, they assert that the same serves as the nucleus or center of MDC's official duties, functions and actuations. Hence, the recommendation of the Executive Committee is itself the recommendation of the MDC as required by law.

Public respondents likewise insist that the reclassification of the 44 hectares of land by the SB of Obando was not irregular even though only 5 hectares was allowed for conversion by the DAR. The power of the local governments to reclassify the lands within their jurisdiction is plenary, subject only to the pertinent provisions of the LGC. It is not limited by any other government agency or instrumentality.

With regard to the issue on public hearing, public respondents interpose that the sanitary landfill is a non-environmentally critical project in an environmentally critical area, as admitted by petitioners. As such, an IEE for ECC purposes is the highest documentary requirement under DAO 30-2003. Despite this, the public was still duly consulted on the establishment and construction of the landfill. Whatever petitioners' sentiments – whether they were heard – are beyond the issue. The fact remains that they voluntarily, intelligently and incessantly voiced their opinions, concerns and fears relative to the project. Their opinions and opinions were, however, definitely heard and considered. Unfortunately, the favorable decision they desired was not given.

On its part, EDC argues that the arguments raised by petitioners herein were squarely ruled upon by this Court. On this ground alone, the motion, which is a mere rehash of the issues, should be denied.

In refutation of petitioners' allegations, EDC contends that this Court correctly ruled that the petition does not involve an environmental damage of such magnitude as contemplated under the rules. Petitioners, who have the burden of proof, failed to present clear and convincing evidence on this requirement. During trial, petitioners did not present a single proof of the environmental damage caused by the construction of the sanitary landfill. What they presented were the existence of environmental risks in the construction and operation of the landfill.

Environmental damage and environmental risks, however, differ from each other. The latter is the actual or potential failure in the environment. The record shows that petitioners' evidence all refer to environmental risks which are all speculative. EDC does not even deny the existence of said environmental risks. Thus, the remedial and mitigation plans to address these issues.

Relative to the application of the Revised Procedural Manual for DAO 2003-30, EDC points out that this Court correctly applied the repealing clause of the said Manual whereby DAO 2006-10 was deemed amended. Further, the issuance of the said Manual was enacted by virtue of DENR Memorandum Circular No. 002, series of 2007 which amended all provisions of the memoranda, memorandum circulars, and other issuances which are inconsistent with provisions of the same. Even assuming that DAO 2003-30 cannot supersede DAO 2006-10 for being ultra vires, EDC and public respondents cannot be faulted for applying the Revised Procedural Manual considering that the same has not been declared illegal or unconstitutional by any court. Since a full blown EIS is not required for the sanitary landfill as stated in the Revised Procedural Manual for DAO 2003-30, public consultations/hearings are likewise not mandatory.

EDC likewise claims that the reclassification of the subject landholding was made in compliance with the requirements of the law. While petitioners find the procedure to be faulty, they do not deny that the requirements and clearances enumerated under Section 2 of MC 54 were complied with. Also, the final requirement in the reclassification of land was passed on June 8, 2011 and not on February 28, 2011, as alleged by petitioners. Thus, there was nothing irregular in the reclassification of EDC's land from agricultural to commercial.

EDC likewise maintains that the location of the landfill is compliant with the law. It complied with the reclassification of the land, construction of the docking area, procurement of earth cover material, installation of leachate collection and treatment plant, use of HDPE liner and geotextile materials, construction of retaining walls with dimensions of 1500m x 7m x 4m, and construction of embankments. The totality of EDC's compliance with the minimum siting and design requirements under RA 9003 and its IRR cannot be brushed aside by petitioners' bare allegation that the location of the landfill is a floodplain.

Lastly, EDC professes that petitioners cannot fault this Court if it appreciated its evidence vis-a-vis that of latter. Neither can they claim that they have no access to the project site considering that a joint ocular inspection of the same was conducted and attended by all stakeholders.

WE now resolve.

There are two issues involved herein. The procedural issue of lack of notice of hearing and the substantive issue of whether this Court committed reversible error in dismissing the petition.

These issues will be resolved sequentially.

On the procedural aspect of the controversy, WE find that petitioners' non-compliance with Sections 4 and 5, Rule 15 of the Rules of Court does not amount to the outright denial of the instant motion because the purpose of a notice of hearing has been served. This is in consonance with the following pronouncement of the Supreme Court, thus –

To be sure, the requirement of a notice of hearing in every contested motion is part of due process of law. The notice alerts the opposing party of a pending motion in court and gives him an opportunity to oppose it. What the rule forbids is not the mere absence of a notice of hearing in a contested motion but the unfair surprise caused by the lack of notice. It is the dire consequences which flow from the procedural error which is proscribed. If the opposing party is given a sufficient opportunity to oppose a defective motion, the procedural lapse is deemed cured and the intent of the rule is substantially complied. In *E L Mercantile, Inc. v. Intermediate Appellate Court*, this Court held:

Procedural due process is not based solely on a mechanistic and literal application of a rule such that any deviation is inexorably fatal. Rules of procedure, and this includes the three (3) days notice requirement, are liberally construed in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding (Section 2, Rule 1, Rules of Court). In *Case and Nantz v. Jugo* (77 Phil. 517), this Court made it clear that lapses in the literal observance of a rule of procedure may be overlooked when they have not prejudiced the adverse party and have not deprived the court of its authority.

A party cannot ignore a more than sufficient opportunity to exercise its right to be heard and once the court performs its duty and the outcome happens to be against that negligent party, suddenly interpose a procedural violation already cured, insisting that everybody should again go back to square one. Dilatory tactics cannot be the guiding principle.

The rule in *De Borja v. Tan* (93 Phil. 167), that "what the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard," is the applicable doctrine. (See also *Aguilar v. Tan*, 31 SCRA 205; *Omico v. Vallejos*, 63 SCRA 285; *Sumadchat v. Court of Appeals*, 111 SCRA 488.)^[1]

In the case at bar, EDC and public respondents were duly notified of petitioners' motion. This is apparent from the fact that they filed their respective comments/oppositions thereto. Hence, the technical defect of lack of notice of hearing was cured by the filing of such pleadings.

Now the substantive aspect of the motion.

After an assiduous evaluation of the arguments raised by petitioners and respondents' respective oppositions thereto, WE stand firm in OUR ruling. The issues and arguments embodied in the instant motion for partial reconsideration were already assessed, considered and adjudicated in the questioned ponencia. It is now unnecessary to discuss again the ratio decidendi laid down therein.

Even assuming, for argument's sake, that the instant motion deserves to be given due course and resolved on its merits, its denial is still inevitable.

It is worth emphasizing that the magnitude requirement under the RPEC does not only relate to the geographic scope or the number of cities or provinces to be affected but, more importantly, to the widespread dimension of the environmental damage brought about by the establishment of the project as to prejudice the life, health and property of inhabitants in two or more cities or provinces. The former cannot be separated from the latter. Petitioners must be able to prove convincingly before this Court such degree of environmental damage. In this instance, as WE have discussed in OUR Decision, petitioners failed to substantiate their allegation of environmental damage of such magnitude for a writ of kalikasan to issue.

WE cannot subscribe to petitioners' argument that the manner of transport of wastes from Manila to Obando by barge which would traverse the jurisdictions of the cities of Manila, Malabon and Navotas and the province of Bulacan meets the magnitude requirement. The alleged consequential damage to the environment on how the wastes will be handled during their transport is dubious and speculative. This is specially so when EDC undertook the construction of special customized barges to securely hold the wastes during transport to prevent spillage.

As to the application of the Revised Procedural Manual for DAO 2003-30, it should be noted that it is the administrative order that was prevailing at the time the application for ECC was filed. Granting without conceding that Section 6.3 of DAO 2006-10 was not amended by the issuance of the Revised Procedural Manual for DAO 2003-30, as what petitioners herein insist, the EMB should not be condemned for relying on the same since it remains valid and constitutional until declared otherwise by any law or judicial fiat.

It is true that DAO 2006-10 set the guidelines on the categorized final disposal facilities while the Revised Procedural Manual for DAO 2003-30 deals with the EIS System which categorizes in detail what EIA report type is required for a particular project. It should be noted that in this case, the issue raised by petitioners is whether or not EDC should undergo a full-blown EIS or whether or not the submission of an IEE Report is sufficient. Thus, the EMB aptly applied the Revised Procedural Manual for DAO 2003-30 to resolved this matter.

In arriving at OUR Decision, all the evidence presented, documentary and oral, principal, corroborating as well as controverting, were assessed and considered. The fact that WE gave more probative value on the evidence of respondents does not necessarily mean that petitioners' evidence were totally disregarded.

Quoting the Supreme Court, viz –

But courts are not bound by the testimonies of expert witnesses. Although they may have probative value, reception in evidence of expert testimonies is within the discretion of the court. Section 49, Rule 130 of the Revised Rules of Court, provides:

Sec. 49. Opinion of expert witness. - The opinion of a witness on a matter requiring special knowledge, skill, experience or training which he is shown to possess, may be received in evidence.

The word “may” signifies that the use of opinion of an expert witness as evidence is a prerogative of the courts. It is never mandatory for judges to give substantial weight to expert testimonies.[2]

Similarly, the High Tribunal decreed –

Indeed, courts are not bound by expert testimonies. They may place whatever weight they choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, and any other matters which serve to illuminate his statements. The opinion of an expert should be considered by the court in view of all the facts and circumstances of the case. The problem of the evaluation of expert testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of an abuse of that discretion.[3]

The contending parties presented their respective expert testimonies. In the exercise of its discretion, coupled with the opportunity to evaluate the witnesses' character and to observe their respective demeanor, this Court opted to rely on the testimonies of the EDC's expert witnesses who made a comprehensive study of the project and who actually went to the project site. That these experts were under the employ of EDC does not necessarily warrant the presumption of bias on their part as witnesses considering that their statements were duly supported by evidence.

WHEREFORE, premises considered, petitioners' motion for partial reconsideration is hereby DENIED.

SO ORDERED.

Reyes, Jr., J. C., (Chairperson) and Reyes-Carpio, A., JJ., concur.

[1] Aneco Realty and Development Corporation v. Landex Development Corporation, G.R. No. 165952, July 28, 2008

[2] Cebu Shipyard and Engineering Works, Inc. v. William Lines, Inc., G.R. No. 132607, May 5, 1999

[3] Milagros Ila-Quianay v. Rodolfo Mapile, G.R. No. 154087, October 25, 2005

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