

**MALAYAN INTEGRATED INDUSTRIES, CORPORATION, PETITIONER,
VS. THE HON. COURT OF APPEALS, CITY OF MANDAUE, MAYOR
ALFREDO M. OUANO, VICE-MAYOR PATERNO P. CANETE,
SANGGUNIANG PAN-LUN...**

G.R. No. 101469. September 04, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

In this special civil action of certiorari and prohibition, Malayan Integrated Industries Corporation (hereafter MALAYAN) prays that upon the filing of its verified petition, a restraining order or a writ of preliminary injunction be issued by this Court to stop the respondents from further proceeding in CA-G.R. SP No. 25621 and, after a consideration of the merits of the petition, judgment be rendered annulling the appellate court's resolutions dated August 9, 1991 and August 28, 1991, and the writ of preliminary injunction issued by it on August 29, 1991.

The only issue in this case is whether the Court of Appeals exceeded its jurisdiction, or acted with grave abuse of discretion, in issuing a writ of preliminary injunction in CA-G.R. SP No. 25621 entitled, "The City of Mandaue, et al. vs. Hon. Leonardo B. Cañares and Malayan Integrated Industries Corporation," "enjoining the respondents and anyone acting in their place and stead, from enforcing the Orders of December 18, 1990 and June 28, 1991 in Civil Case No. CEB-9658 until further orders x x x" (p. 1239, Rollo, Vol. II).

This is a simple case which has been made to appear complicated by the over-extended pleadings of the parties. The petition and its annexes consist of 1,273 pages. The respondents are not to be outdone with their comments of 395 pages. Running true to form, the petitioner filed a reply of 307 pages. The pleadings comprise 3 volumes, each several inches thick. Such profligacy with words is hard to match. Counsels on both sides should heed the admonition of Justice Isagani A. Cruz that:

"Counsel should remember that they do a disservice to the administration of justice and contribute to its delay by imposing on the time of the courts with irrelevant discussions that only clutter the record." (Arturo E. Edudela, et al. vs. Hon. Court of Appeals, et al., G.R. No. 89265, July 17, 1992.)

The records show that on December 12, 1977, a reclamation contract was signed between the City of Mandaue and MALAYAN for the reclamation of some 180 (later increased to 360) hectares of offshore and foreshore land and their development into an industrial and trading center with a modern harbor and port facilities for both domestic and international commerce. The area would connect Cebu City harbor with the City of Mandaue from the Cabahug coastway up to the Cebu City-Mandaue boundary. The project was supposed to be completed within four (4) years after approval of the contract by the Office of the President.

However, that transaction appeared to be unauthorized under P.D. No. 3-A dated January 11, 1973 which provides that the reclamation of areas under water, whether foreshore or inland, will be done only by the national

government or any person authorized by it with a proper contract.

Moreover, Executive Order No. 525 of President Marcos designated the Public Estates Authority (PEA) as "the central authority primarily responsible for integrating, directing and coordinating all reclamation projects for and in behalf of the National Government."

Acting Minister of Justice Catalino Macaraig, Jr., in his Opinion No. 70, Series of 1979 dated July 16, 1979, opined that P.D. No. 3-A impliedly withdrew or repealed the right of Mandaue City under its charter (Sec. 94, R.A. 5519) to reclaim its submerged or foreshore lands. He added, however, that "if the PEA decides to authorize the City of Mandaue to reclaim its own foreshore, the former may execute a contract with the latter pursuant to the above-scored provision of Executive Order No. 3-A in connection with Sec. 1, of P.D. No. 3-A, x x x" (p. 332, Rollo, Vol. I).

Accordingly, the Sangguniang Panlungsod of Mandaue, in its session of October 12, 1979, passed Resolution No. 116 authorizing the City Mayor to sign a Memorandum of Understanding with the PEA. Its Resolution No. 117 of the same date authorized the City Mayor to enter into a contract with the PEA for the reclamation of 360 hectares, more or less, of the foreshore and submerged lands of Mandaue City.

On November 26, 1979, the City of Mandaue and MALAYAN signed a Confirmatory Agreement whereby MALAYAN bound itself to undertake and prepare at its own expense, the detailed and integrated development plan on land use, including technical, economic, marketing and financial feasibility studies required by the Office of the President, and to submit the completed study "not later than July 31, 1980" (p. 344, Rollo, Vol. I).

On August 13, 1980, MALAYAN submitted to PEA documents relating to the Metro Cebu Reclamation and Development Project. Two days later, or on August 15, 1980, MALAYAN submitted a detailed land use and development strategy and an overview of the project.

On September 29, 1980, PEA Chairman, Ruben Ancheta, recommended approval of the project.

Although President Marcos "approved in principle" the reclamation and development project, the contract of reclamation and development between the City of Mandaue and MALAYAN remained hanging in the air (p. 338, Rollo, Vol. I).

After the 1986 "People Power" Revolution, the project was resubmitted to President Corazon C. Aquino for approval.

On June 13, 1988, the City of Mandaue reiterated its request to President Aquino "for approval and go-signal to commence the reclamation work" (p. 417, Rollo, Vol. I). The letter was referred by the President to PEA.

As of May 24, 1989, the detailed and integrated plan on land use, including technical, economic, marketing and financial feasibility studies submitted by MALAYAN remained "still pending approval by the Office of the President." (p. 441, Rollo, Vol. I.)

On February 13, 1989, PEA's General Manager, Eduardo C. Zialcita, advised MALAYAN that the feasibility study should be updated.

Since the Office of the President seemed to have reservations concerning the contract between MALAYAN and the City of Mandaue, and in view of the City's desire to undertake the reclamation project without further delay, City Mayor Alfredo M. Ouano informed the PEA on April 15, 1989 that the City was negotiating with F.F. Cruz & Co., Inc., in consortium with the Cebu Contractors Association, to undertake the preparation of the detailed feasibility and development plan for the reclamation project. Mayor Ouano pointed out that F.F. Cruz & Co., Inc. is a reputable private construction firm in Manila, "with international prestige and proven capability as a

reclamation contractor with its own dredging equipment and the financial capacity to undertake, on its own, the Mandaue reclamation project" (p. 483, Rollo, Vol. I).

On April 19, 1989, the Sangguniang Panlungsod of Mandaue passed Resolution No. 134/89 authorizing the City Mayor to enter into a reclamation contract with F.F. Cruz & Co., Inc. subject to the President's approval.

The contract with F.F. Cruz & Co., Inc. was signed a week later, on April 26, 1989.

Upon learning about the City's contract with F.F. Cruz & Co., Inc., MALAYAN inquired from the Office of the President whether Section 7 of R.A. 5519, known as the Charter of the City of Mandaue, providing that the City alone shall have authority to reclaim its offshore land, had been repealed, revoked, amended or superseded by Section 1 of P.D. No. 3-A, promulgated on January 11, 1973, and Section 1 of E.O. No. 525 dated February 14, 1979.

The query was answered in the affirmative on August 31, 1989 by the Chief State Counsel, Elmer T. Bautista, citing Justice Secretary Macaraig's Opinion No. 70, S. 1979, "which opinion still stands" (p. 498, Rollo, Vol. I).

On May 6, 1989, the PEA recommended the approval in principle of the proposed reclamation project subject to the following conditions:

"(a) Submission to PEA by the City of Mandaue, for review and approval a Master Development Plan for the planned reclamation, within six (6) months from date hereof, otherwise project approval shall be deemed automatically revoked.

"(b) Undertaking of Detailed Engineering Studies for the major physical infrastructures involved.

"(c) Supervision by PEA of the reclamation and related infrastructure works and the cost of such supervision to be charged to the Project.

"(d) Delegation of authority to Mandaue City to negotiate with a reputable Contractor that shall undertake physical reclamation works under a proper contract, which shall contain stipulations on the compensation, costs of the project and other relevant conditions subject to the review and approval of the Public Estates Authority as provided under existing laws.

"(e) That the previous approval in principle granted to Malayan Integrated Industries Corporation for a similar reclamation project, jointly with the Province of Cebu, City of Cebu, City of Mandaue, Municipality of Cordova and the City of Lapu-Lapu, by former President Marcos be deemed abandoned, and set aside, by reason of the failure of Malayan Integrated Industries Corporation to execute/implement the project for a long period of time reckoned from 1979 to the present. Moreover, there appears to be a lack of indorsement by the local government of Cebu Province and Mandaue City of this undertaking by Malayan Integrated Industries Corporation." (Underscoring ours; pp. 530-531, Rollo, Vol. I.)

MALAYAN filed a protest with the Office of the President against the reclamation contract between the City of Mandaue and F.F. Cruz & Co. (pp. 542-545, Rollo, Vol. I).

On PEA's recommendation, Executive Secretary Catalino Macaraig, Jr., by authority of the President, approved on June 27, 1989, the proposed Mandaue reclamation project, covering approximately 180 hectares of foreshore and submerged lands, subject to certain conditions, and declared that "the Contract of Reclamation and Development entered into by and between the City of Mandaue and Malayan Integrated Industries Corporation on December 12, 1977 is hereby DISAPPROVED, and/or is hereby declared as without force and effect, it appearing from the records that the same was entered in violation of the provisions of Section 1 of Presidential Decree No. 3-A, and/or for the failure of said corporation to implement, as stipulated, the project within a reasonable period of time." (pp. 583-584, Rollo, Vol. I; emphasis supplied.)

On November 26, 1990, MALAYAN filed in the Regional Trial Court, Branch 10, Cebu City (originally in the Regional Trial Court, Manila but it withdrew the case) a petition for prohibitory and mandatory preliminary injunction against the City of Mandaue, F.F. Cruz & Co., Inc., the Cebu Contractors Association, the Mandaue Realty Resources Corporation and Philippine Orion Properties, Inc. The case was docketed as Civil Case No. CEB-9658 in which MALAYAN prayed the Court to restrain the implementation of the reclamation contract between the City of Mandaue and F.F. Cruz & Co., Inc. as it would work injustice to MALAYAN and violate MALAYAN's valid and previously perfected contract with the City of Mandaue, and it would cause damages to MALAYAN which has already incurred expenses and invested huge sums of money in the Mandaue Reclamation Project. MALAYAN also prayed the Court to issue a writ of preliminary mandatory injunction allowing MALAYAN to immediately undertake actual reclamation works in the Mandaue Reclamation Project.

On November 29, 1990, the trial court issued a temporary restraining order enjoining the respondents "from further continuing with the implementation of the aforementioned contract being questioned, until further orders from this Court" (p. 649, Rollo, Vol. I).

An Urgent Motion to Quash the Restraining Order and a separate Motion to Dismiss the petition filed by the respondents did not prosper.

After a proper hearing, Judge Leonardo B. Cañares granted on December 18, 1990 the writ of preliminary prohibitory injunction prayed for by MALAYAN upon its posting a P5 million injunction bond. The dispositive part of his order reads as follows:

"WHEREFORE, upon the filing of an injunction bond with this Court amounting to P5,000,000.00, let a writ of preliminary prohibitory injunction be issued, enjoining all of the respondents, their assigns, agents, representatives or anybody acting for them or in their behalf from implementing the Contract of Reclamation dated April 26, 1989, executed by and between Mandaue City and respondents F.F. Cruz & Co., Inc. and Cebu Contractors Association and all other reclamation contracts executed in favor of said respondents and/or assigns by the City of Mandaue and/or Public Estates Authority, and from conducting any kind of works in any part of the area covered by the Mandaue Reclamation Project.

"The motions to dismiss and other incidents filed by the respondents are hereby denied for being premature." (pp. 677-678, Rollo, Vol. I.)

After the respondents' motions for reconsideration were denied by the Court, they filed in the Court of Appeals on August 9, 1991, a petition for certiorari with prohibitory and mandatory preliminary restraining order and/or preliminary injunction. (CA-G.R. SP No. 25621, entitled, "City of Mandaue, F.F. Cruz & Co., Inc., et al., petitioners vs. Judge Leonardo B. Cañares and Malayan Integrated Industries Corporation, respondents" praying that the preliminary writ of injunction issued by Judge Cañares be nullified, that respondent MALAYAN be prohibited from interfering with the reclamation works of the petitioners, City of Mandaue and F.F. Cruz; that respondents Judge Cañares and MALAYAN be restrained from enforcing the orders dated December 19, 1990 and June 28, 1991 of respondent Judge; that the petition of MALAYAN in the Case No. CEB--9658 be dismissed; and that MALAYAN be prohibited from interfering with the contract of reclamation between the City of Mandaue and F.F. Cruz & Co., Inc., the Memorandum of Agreement between the PEA, the City of Mandaue and MARECO, and all other related contracts and activities concerning the Mandaue Reclamation Project.

The Court of Appeals issued on August 9, 1991 a temporary restraining order to preserve the status quo and enjoined the respondents and anyone acting in their place from enforcing Judge Cañares' orders of December 19, 1990 and June 28, 1991, until further orders from said court.

On August 28, 1991, the Court of Appeals issued a writ of preliminary injunction upon a P10,000,000.00 bond

posted by F.F. Cruz & Co., Inc.

Upon the denial of its motion for reconsideration of the appellate court's resolution, MALAYAN filed a petition for certiorari and prohibition in this Court to annul it.

After a careful consideration of the voluminous petition and the equally voluminous responses of the public and private respondents, the Court finds that the Court of Appeals did not abuse its discretion in stop-ping Judge Cañares and MALAYAN from interfering with the prosecution of the Mandaue reclamation project by respondents F.F. Cruz & Co., Inc. and its associates, the Cebu Contractors Association, Mandaue Realty Resources Corporation and Philippine Orion Properties, Inc.

In the first place, as explained in the Appellate Court's resolution, the contract between the City of Mandaue and F.F. Cruz & Co., Inc., et al. "had been approved by the Office of the President," while the reclamation contract with MALAYAN "was disapproved" (pp. 1236-1237, Rollo, Vol. II).

"x x x the Mandaue Reclamation Project, subject of the contract between the Mandaue local government and private petitioners, has been approved by the Office of the President of the Philippines (Annex 'M' of the Petition). In the same official document, the 'Contract of Reclamation and Development' entered into by and between the City of Mandaue and private respondent Malayan Integrated Industries Corporation on December 12, 1977 was disapproved. And pursuant to the approved reclamation project and the contract entered into by and between them, petitioners undertook the reclamation of foreshore and submerged lands from the Cabahug Causway in Mandaue City towards the boundary with Cebu City. In the course thereof at least a total of 23,4710 hectares of said lands have been reclaimed by private petitioners after spending the sum of P181,476,690.59 as of December 31, 1990." (Underscoring supplied.)

Secondly, Judge Cañares' writ of preliminary prohibitory injunction, halting the prosecution of the Mandaue reclamation project, violated P.D. No. 1818 which prohibits courts from issuing such writ to stop any person, entity, or government official, from proceeding with or continuing the execution or implementation of an infrastructure project, such as the reclamation of foreshore and submerged lands along the coast of Mandaue City up to the Cebu City boundary for the purpose of developing the reclaimed area into an industrial and trading center with a modern harbor and port facilities for both domestic and international commerce. P.D. No. 1818 provides:

"P.D. 1818 - Prohibiting courts from issuing restraining orders or preliminary injunctions in cases involving infrastructure and natural resource development projects of, and public utilities operated by, the Government.

"WHEREAS, Presidential Decree No. 605 prohibits the issuance by the courts of restraining orders or injunctions in cases involving concessions, licenses, and other permits issued by administrative officials or bodies for the exploitation, development and utilization of natural resources of the country;

"WHEREAS, it is in the public interest to adopt a similar prohibition against the issuance of such restraining orders or injunctions in other areas of activity equally critical to the economic development effort of the nation, in order not to disrupt or hamper the pursuit of essential government projects;

"NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree and order as follows:

"SECTION 1. No 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, or a mining, fishery, forest or other natural resource development project of the government, or any public utility operated by the government, including among others public utilities for the transport of the goods or commodities, stevedoring and arrastre contracts, to prohibit any person or persons, entity or government

official from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation."

The Court of Appeals further observed that "in the balance of inconveniences the petitioners appear to stand to suffer grave and irreparable injury, and much more damages than MIIC (MALAYAN) which has not done any reclamation works on the area subject of the dispute." (p. 1239, Rollo, Vol. II.)

Although the letter to the PEA advising it of the approval of the reclamation contract between the City of Mandaue and F.F. Cruz & Co., Inc. and the disapproval of the earlier agreement between the City of Mandaue and MALAYAN, was signed by the Executive Secretary, "by authority of the President," and not by the President's own hand, the Executive Secretary's action is presumed to be valid and to have been regularly performed in behalf of the President (Section 2[m], Rule 131, Revised Rules on Evidence) and thus should be accorded due respect (Lacson-Magallanes vs. Paño, 129 Phil. 123; GSIS vs. CIR, December 30, 1961; Soriano vs. Ancheta, March 18, 1985; Roque vs. Director of Lands, July 1, 1976). As head of the Executive Office, the Executive Secretary, is an alter ego of the President (Sec. 22, Chap. 8, Title II, Book II, 1987 E.O. 292, Adm. Code of 1987). One of his myriad functions is "to exercise primary authority to sign papers 'By authority of the President,' attest executive orders and other presidential issuances unless attestation is specifically delegated to other officials by him or by the President; assist the President in the administration of special projects; and perform such other functions as the President may direct" (Sec. 22, subpars. 10, 14 and 18, Ibid). Paraphrasing Villena vs. Secretary of the Interior, 67 Phils. 451, his personality is in reality "but the projection of that of the President," his acts, "performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive." The approval by the Office of the President of the reclamation contract in favor of F.F. Cruz & Co., Inc. and the rejection of the contract with MALAYAN, is not subject to review by the courts in view of the principle of separation of powers which accords co-equal status to the three great branches of the government, absent any showing that the President, in doing so, acted with grave abuse of discretion amounting to lack or excess of jurisdiction (Sec. 1, Art. VIII, 1987 Constitution). Only on that ground may this Court justifiably intervene in a transaction that otherwise would be the exclusive preserve of the Chief Executive.

In fact, while MALAYAN has asked the courts to nullify the reclamation contract between the City of Mandaue and F.F. Cruz & Co., Inc., it did not assail the Office of the President for having approved it. Its petition for prohibitory and mandatory injunction in the Regional Trial Court of Cebu City (CEB-9658), did not implead, as respondents, nor charge with grave abuse of discretion, the President of the Philippines, Executive Secretary Catalino Macaraig, Jr., Deputy Executive Secretary Magdangal Elma, Jr., and PEA General Manager Eduardo Zialcita, for having approved, or recommended the approval, by the President, of the said reclamation contract with F.F. Cruz & Co., Inc. and the disapproval of the prior agreement between the City of Mandaue and MALAYAN.

WHEREFORE, finding no grave abuse of discretion in the assailed resolution dated August 28, 1991 of the Court of Appeals in CA-G.R. SP No. 25621, the petition for certiorari and prohibition is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Cruz, (Chairman), J., I concur, subject to my reservation in APT v. Court of Appeals, G.R. No. 101344 Medialdea, and Bellosillo, JJ., concur.

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