

GOVERNOR PABLO P. GARCIA, THE PROVINCE OF CEBU; TOMAS R. OSMEÑA; MAYOR ALVIN B. GARCIA, THE CITY OF CEBU; ALLAN C. GAVIOLA, CITY ADMINISTRATOR; JOSE A. GUISADIO, CITY PLANNING A...

G.R. No. 124130. June 29, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Presidential Decree 1818 prohibits courts from issuing an injunction against any infrastructure project, such as the Cebu South Reclamation Project, “in order not to disrupt or hamper the pursuit of essential government projects” or frustrate “the economic development effort of the nation.” This Court will not tolerate a violation of this prohibition.

Statement of the Case

Petitioners, through Rule 65 of the Rules of Court, assail the validity of three Orders of Judge Jose P. Burgos of the Regional Trial Court of Cebu.[1] The first assailed Order, dated February 22, 1996, denied herein Petitioner Tomas R. Osmeña’s Omnibus Motion with Opposition to the Application for Writ of Preliminary Injunction, which prayed that said application be cancelled or its hearing deferred, and that the temporary restraining order already issued in favor of herein private respondent be lifted.[2]

The respondent judge’s previous voluntary inhibition was set aside by the second assailed Order dated March 12, 1996, which reads as follows:

“WHEREFORE, premises considered, the motion for reconsideration is granted and accordingly, the order of the Presiding Judge in voluntarily inhibiting himself from further sitting in the case dated February 26, 1996 is reconsidered and set aside.

Set this case for another hearing on the application for preliminary injunction on March 15, 1996 at 10 o’clock in the morning whereby defendants are ordered to show cause if any they have why the injunction should not be granted.

SO ORDERED.”[3]

Meanwhile, the preliminary injunction sought by herein private respondent was granted by respondent judge who, in his third assailed Order dated March 18, 1996, ruled in this wise:

“WHEREFORE, premises considered, and in order to preserve the status quo, upon the filing of an injunction bond with this Court in the amount of Two Million (P2,000,000.00) Pesos, let a writ of preliminary injunction be issued, hereby enjoining all the defendants, their assigns, agents and representatives or anyone acting for any or all of them or in their behalf from implementing the memorandum of agreement dated September 11, 1995, attached and marked as Annex ‘V’ in the original complaint dated January 18, 1996, except the construction of the Cebu South Coastal Road, and all other agreements/contracts of defendants concerning the

Cebu South Reclamation Project tending to deprive plaintiff of its prior contractual rights in the said Cebu South Reclamation Project until further orders from this Court.

The amount of the required bond shall answer for all damages that the defendants may sustain by reason of the injunction should the Court finally decide that plaintiff was not entitled thereto.

SO ORDERED.”[4]

The Facts

In their pleadings, the parties tried their best to give detailed accounts of the factual antecedents of this case. In fairness to them, the Court hereby reproduces in toto their respective narrations.

Petitioners’ Version

“A. The Project

1. The Cebu South Reclamation Project (hereinafter referred to as the “PROJECT”) is a FOUR BILLION PESO (P4,000,000,000.00) project of the Government of the Republic of the Philippines (hereinafter referred to as the “GOVERNMENT”), funded out of a loan taken out by the government from the Government of Japan, through its international financing institution, the Overseas Economic Cooperation Fund (hereinafter referred to as the “OECF”).

2. The loan was made possible by virtue of an Exchange of Notes between the Governments of the Republic of the Philippines and Japan, whereby the latter extended a total loan package of ONE HUNDRED BILLION NINE HUNDRED SIXTY-FOUR MILLION YEN (Y101,964,000,000.00) [sic] to finance certain specified and listed projects of the former. Among these projects to be financed by the loan is the Cebu South Reclamation Project. (Refer to Annex “E”- Petition)

3. The project is an integral part of the Third Phase of the Metro Cebu Development Projects (hereinafter referred to as “MCDP III”), which has been favorably endorsed and approved by the President of the Republic of the Philippines, Fidel V. Ramos, as “one of the projects of the national government.” (Refer to Annex “F”- Petition)

4. The project has likewise been approved by the National Economic and Development Board (the “NEDA”), of which the President is the Chairman, as an ICC Project, by virtue of NEDA Resolution No. 1, Series of 1995. (Refer to Annex “G”- Petition)

5. The project is further certified as a project of the Government of the Republic of the Philippines, by the Department of Foreign [Affairs], through its Secretary, Domingo E. Siazon. (Refer to Annex “H”- Petition)

6. In due course, loan agreements in implementation of the Exchange of Notes between the two governments were executed between the OECF and [P]etitioner Land Bank of the Philippines (the “LANDBANK”). Under these agreements, the City of Cebu was designated as the project’s implementing agency. (Refer to Annex “I”- Petition)

7. In accordance with the Constitution, the loan package to finance, among others, the Cebu South Reclamation Project, was granted final approval by the Monetary Board, by virtue of Resolution No. 1260 issued on 07 November 1995. (Refer to Annex “J”- Petition)

8. The loan arrangements having been entered into, and the funds ready for release to the City of Cebu, the implementing agency of the project, the City of Cebu, the Department of Public Works and Highways (the “DPWH”) and the Metro Cebu Development Project Office (the “MCDPO”) executed, on 11 September 1995, the “Implementing Arrangement for Metro Cebu Development Project Phase III (MCDP III)” (Refer to Annex “K” - Petition), under which agreement is outlined the procedure for implementation of the project as well as

the rights and obligations of the parties thereto.

B. The Suit Filed Below by Private Respondent

9. On 19 January 1996, [P]rivate [R]espondent Malayan Integrated Industries Corporation (hereinafter referred to as “MALAYAN”), filed a case for “Specific Performance, Declaration of Nullity, Damages and Injunction, with Writ of Preliminary Injunction and Temporary Restraining Order” against herein petitioners, docketed as Civil Case No. CEB-18292, before the Regional Trial Court of Cebu City. (Refer to Annex “L” - Petition) The case was raffled to Branch 17 of the said court.

10. Pursuant to Supreme Court Administrative Circular No. 20-95, a summary hearing was conducted by respondent [j]udge to determine the propriety of issuing the temporary restraining order (TRO) prayed for by [R]espondent Malayan in its complaint.

11. During the summary hearing to determine whether the temporary restraining order (TRO) should issue, defendants questioned the jurisdiction of the court to issue the same, citing Section 1 of Presidential Decree No. 1818, which provides:

“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 officials 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.” (Sec. 1, P.D. 1818; emphasis supplied)

12. It was also pointed out to herein respondent [j]udge that the Supreme Court, in Administrative Circular 13-93, pursuant to P.D. 1818, and in implementation of the policy behind the law, prohibited all judges of all courts from issuing TRO’s and/or writs of preliminary injunction against the implementation of government infrastructure projects.

13. It was further manifested that the Supreme Court, observing non-compliance with the above-cited Circular by judges of trial courts was compelled to reiterate its earlier prohibition, with a warning against further violation, for their “strict compliance”, under Administrative Circular No. 68-94, issued on 3 November 1994, which states:

“There have been reports that despite Circular 13-93, dated March 5, 1993, some courts are still issuing temporary restraining orders and/or preliminary injunctions even in cases, disputes, or controversies involving government infrastructure projects in violation of Section 1 of P.D. 1818 x x x

“xxx xxx xxx “

In order to obviate complaints against the indiscriminate issuance of restraining orders and court injunctions against government public utilities and infrastructure projects in gross violation of the aforesaid Presidential Decree, the provision of Circular No. 13-93 issued on March 5, 1993 is hereby reiterated for your strict compliance.

“xxx xxx xxx” (Supreme Court Administrative Circular No. 68-94; emphasis supplied)

14. In gross violation of the law and the circulars of the Honorable Supreme Court, however, respondent [j]udge issued a temporary restraining order on 5 February 1996, the dispositive portion of which reads as follows:

“The verified complaint being sufficient in form and substance and in order to preserve the status quo, all the defendants and their agents, employees, workers and all persons acting in their behalf are temporarily restrained

from implementing the alleged memorandum of agreement dated September 11, 1995, and any and all such other agreements/contracts entered into by any and all of the defendants, covering the Cebu South Reclamation Project consisting of 330 hectares more or less” (Refer to Annex “M” - Petition)

15. The hearing on [R]espondent Malayan’s application for the writ of preliminary injunction was set for 14 February 1996. During the said hearing, [P]etitioner Tomas R. Osmeña filed an Omnibus Motion for: (a) the immediate lifting of the Temporary Restraining Order; (b) the cancellation of the hearing on the application for the writ of preliminary injunction; and (c) the outright dismissal of the complaint. The Omnibus Motion was subsequently adopted by the defendants below. (Refer to Annex “N” - Petition)

16. The thrust of the Omnibus Motion was that the court below had, under P.D. 1818, no jurisdiction and no compelling reason to issue any TRO and/or writ of preliminary injunction against the implementation of a government infrastructure project. Since it had no jurisdiction to issue such TRO and/or writ of preliminary injunction, much less does it have the jurisdiction to entertain any application for the injunctive writ.

17. The Omnibus Motion likewise refuted respondent [j]udge’s arguments in its Order dated 5 February 1996 granting the TRO, wherein he attempted to remove the case from the ambit of P.D. 1818 thus:

(a) the ruling in *Genaro R. Reyes Construction, Inc. v. Court of Appeals*, 234 SCRA 116 applies to the case at bar;

(b) “plaintiff is not asking for enjoining the infrastructure project x x x [but] the enjoining of the contract to be awarded to another entity”;

(c) “inclusion of reclamation of submerged lands as being covered under the term ‘infrastructure project’ [is a] classification [that] has yet to be determined in the light of existing Presidential Proclamations, Orders and/or Executive Memorandums.”

18. Respondent Judge -- apparently to verify whether the project was an infrastructure project of the national government -- required defendants below, petitioners herein, to show proof that the project had the approval of the President of the Republic of the Philippines.

19. In compliance with the order of respondent [j]udge, petitioners, during the continuation of the hearing on the Omnibus Motion, set on 16 February 1996, presented the documents mentioned above (Refer to Annexes “D” to “J” - Petition), proving that the project had the favorable recommendation and approval, not only of the President, but likewise of the NEDA, and certified as a project of the Government of the Republic of the Philippines by the Department of Foreign Affairs. Insofar as the loan agreements were concerned, the Exchange of Notes (Annex “D”) and the resolution of the Monetary Board (annex “J”) approving the loan agreement were presented. All requirements for the implementation of a perfected contract are present and submitted to the court.

20. Following the presentation of the foregoing documents, respondent [j]udge gave the parties five (5) days to submit their respective memoranda on the Omnibus Motion, after which the incident would be deemed submitted for resolution.

21. On 21 February 1996, the parties filed their respective memoranda. As the memorandum for [R]espondent Malayan contained misstatements of the facts of the case, petitioner Tomas R. Osmeña filed a “Reply to Plaintiff’s Memorandum” at 9:00 o’clock in the morning of the following day, 22 February 1996.

22. With unusual dispatch in a time frame of only a few hours, however, and under suspicious circumstances, in the afternoon of the same day, 22 February 1996, respondent [j]udge had issued an Order (Refer to Annex “A” - Petition), a quite comprehensive five-page resolution denying petitioners’ Omnibus Motion, received by

petitioners on 23 February 1996.

23. Without having to consider the unusual haste with which the Order was issued -- considering that it was issued the day immediately after the last day for the filing of the memoranda, and on the day, and just hours after petitioner Osmeña's "Reply to Plaintiff's Memorandum" was filed, the Order dated 22 February 1996 was highly irregular for the most obvious reasons.

24. A cursory review of the Order dated 22 February 1996 would reveal that it has practically decided the case on the merits, on a mere resolution of an incident in the main case. The Order denying the Omnibus Motion has practically ruled that: (a) [R]espondent Malayan has valid, existing and enforceable contracts of reclamation approved by the President of the Philippines; (b) petitioners' reclamation project did not have the approval of the President; and (c) petitioners were violating [R]espondent Malayan's contracts.

These were precisely the issue[s] in the main case for specific performance.

24.1 It would be relevant to mention that in so ruling, respondent Judge practically considered "evidence" which were non-existent in favor of [R]espondent Malayan, and suppressed the evidence presented by petitioners.

25. [I]n view of the actions of respondent [j]udge, [P]etitioner Osmeña filed, on 23 February 1996, an Omnibus Motion, praying, among other things, for the voluntary inhibition of respondent [j]udge on the ground of partiality manifested by the Order of 22 February 1996, which practically decided the case on the merits in favor of [R]espondent Malayan, in a resolution of a mere incident in the case.

26. In an Order dated 26 February 1996, respondent [j]udge voluntarily inhibited himself. (Refer to Annex "O" - Petition)

27. Respondent Malayan, however, filed a motion for reconsideration of the Order of voluntary inhibition, to which petitioner Osmeña filed an Opposition.

28. In the meantime, petitioner Osmeña had filed a Motion for Reconsideration of the Order dated 22 February 1996 denying the Omnibus Motion, with the cautionary notice that it was not to be deemed as a waiver of their opposition to the motion for reconsideration filed by [R]espondent Malayan of respondent [j]udge's Order of voluntary inhibition. Instead, the said Motion for Reconsideration with Cautionary Notice was to be heard by the court to which the case was to be eventually re-raffled, and scheduled for hearing on 22 March 1996.

29. On 12 March 1996, however, respondent [j]udge reversed himself and reconsidered his Order of voluntary inhibition dated 26 February 1996, and set the hearing on [R]espondent Malayan's application for the writ of preliminary injunction for 15 March 1996. (Refer to Annex "C" - Petition)

30. Since the Motion for Reconsideration with Cautionary Notice was still pending resolution (and the hearing thereon yet to be conducted on 22 March 1996), petitioner filed an Urgent Motion for Resetting of the hearing, considering that the Motion for Reconsideration with Cautionary Notice -- which questioned the court's jurisdiction to entertain the application for the writ of preliminary injunction -- was prejudicial to the hearing set for 15 March 1996, since it would determine whether or not such proceedings should continue or not.

31. During the hearing on 15 March 1996, however, respondent [j]udge denied petitioner Osmeña's Urgent Motion for Resetting.

32. Again, with unusual dispatch, on 18 March 1996, respondent [j]udge issued two (2) Orders, one granting the writ of preliminary injunction prayed for by [R]espondent Malayan (Refer to Annex "B" - Petition), and another one denying petitioner's Motion for Reconsideration with Cautionary Notice -- both issued even before the

hearing on the Motion for Reconsideration with Cautionary Notice which was yet scheduled for 22 March 1996.

33. Hence, this petition for certiorari, questioning: (a) the validity of the Orders of respondent [j]udge dated 22 February 1996 claiming it had the jurisdiction to entertain and to issue a writ of preliminary injunction against petitioners' government infrastructure project, and the Order of 18 March 1996, granting the writ of preliminary injunction; and (b) the validity of the Order of respondent [j]udge dated 12 March 1996, reconsidering his earlier Order of voluntary inhibition, there being no other plain, speedy and adequate remedy in the ordinary course of law."^[5]

Private Respondent's Version

"On May 22, 1967, Proclamation No. 200-A was issued which reserved for national improvement purposes, a certain parcel of land of the [p]ublic [d]omain situated in the foreshore of the District of San Nicolas, Pardo, Cebu City and Tangkey, Talisay, Cebu. This area was transferred and relinquished by the President of the Philippines to the Province of Cebu in behalf of the [n]ational [g]overnment, subject to private rights, if any there be. Copy of said proclamation was attached as Annex "4" to respondents' Comment.

On January 11, 1973, Presidential Decree No. 3-A was issued which decreed that the reclamation of land under water, whether foreshore or inland, throughout the Philippines belong to and are owned by and limited to the [n]ational [g]overnment or to any person authorized by it under a proper contract.

On October 14, 1977, pursuant to and in accordance with the above-said Proclamation No. 200-A and Sec. 1 of P.D. No. 3-A, the Sangguniang Panlalawigan of Cebu and the then Cebu Provincial Governor Eduardo R. Gullas granted, awarded and authorized private respondent to undertake the actual and physical reclamation and development works of the foreshore, submerged and offshore areas of Three Hundred Fifty (350) hectares, more or less, which is a portion of the approximate area of 5,386,800 square meters or 438.6800 hectares, as described in Proclamation No. 200-A. Copy of said Award was attached as Annex "5" to the Comment of respondents.

On October 31, 1977, a Contract of Reclamation and Development was entered into, signed and executed by and between the Province of Cebu, represented by then Governor Eduardo R. Gullas, and private respondent. Copy of said Contract was attached as Annex "6" to the Comment.

The said Contract of Reclamation and Development dated October 31, 1977 between Cebu Province and private respondent was authorized by Resolution No. 475 dated October 4, 1977 of the Sangguniang Bayan [sic] Panlalawigan of Cebu.

On September 15, 1978, the Sangguniang Panlalawigan of Cebu and then Cebu Governor Eduardo R. Gullas considered and approved the request of private respondent dated August 25, 1978 that the reclamation area of 350 hectares, more or less be increased from 350 hectares to 625 hectares, more or less. Copy of said resolution was attached as Annex "7" to respondent's Comment.

On October 7, 1978, the Second Supplemental Contract of Reclamation and Development between the Province of Cebu and private respondent was entered into, signed and execu[t]ed by and between the Province of Cebu and private respondent. Copy of said contract was attached as Annex "8" to the respondents' Comment.

On January 15, 1979, a Contract of Reclamation and Port Development was entered into, executed and signed by and between private respondent and Amsterdam Ballast Dredging Corporation (BALLAST) in connection with and regarding the reclamation area of 625 hectares of the foreshore, submerged and offshore areas from Pasil, Cebu City, to Tangke, Talisay, Cebu to Kawit Island and then to Pasil, Cebu City. Copy of said contract was attached as Annex "9" to respondents' Comment.

On February 7, 1979, a Memorandum dated February 7, 1979 addressed to then President Marcos, was

submitted by the Province of Cebu, represented and signed by then Governor Eduardo R. Gullas, and the City of Mandaue, represented and signed by then City Mayor Demetrio M. Cortes for final consideration and approval. Copy of said memorandum was attached as Annex “10” to respondents’ Comment.

When the Province of Cebu and the City of Mandaue submitted to the President the Cebu South Reclamation Project for approval per memorandum dated February 7, 1979, attached as Annex “10” to respondents’ Comment, it was premised on the following consideration as stated in the first paragraph of said memo:

“In our earnest desire to contribute our share to the program of Your Excellency and of our government on industrialization, industrial dispersal and regional development in the New Society, the Province of Cebu and the City of Mandaue have authorized, subject to your Excellency’s reclamation of 625 and 360 hectares of foreshore and offshore lands in South Cebu from Pasil, Cebu City to Tangke, Talisay, Cebu by virtue of Presidential Proclamation No. 200-A, promulgated on May 22, 1967 (ANNEX “B”), which gives the Province of Cebu the authority to administer these areas within the City of Cebu, and, in Mandaue City, from Subangdaku to the Cabahug Coastways, by virtue of Sec. 94 of Republic Act No. 5519, which vests ownership and possession of all foreshore lands and submerged lands of the public domain in the City of Mandaue (ANNEX ‘C’), respectively, under contracts of Reclamation and Port Development with Malayan Integrated Industries Corporation, hereto attached as Annexes “D” and “E”, which we believe offer the most advantageous terms for the Province of Cebu, and City of Mandaue and the [n]ational [g]overnment because not a single centavo will be spent by the government in return for its share in the reclaimed areas and the operation of the international and domestic port facilities thereof, not to mention the socio-economic impact that the projects will create in the Visayas and Mindanao.” (Emphasis ours)

On August 13, 1979, the Cebu South Reclamation Project was presented by the Province of Cebu and Mandaue City, was considered and approved in principle by then President E. Marcos, as per Presidential Memorandum directive dated August 13, 1979 and a copy thereof is attached as Annex “Q” of the petition. Among the salient provisions of said presidential approval are:

“a. That within twelve (12) months after the issuance of [p]residential directive authorizing the Project, a detailed and integrated development plan on land use including technical, economic, marketing and financial feasibility studies be submitted to the President for approval, otherwise, project approval may be deemed automatically revoked; to enable the PEA to exercise its responsibilities as the representative of the [n]ational [g]overnment as landowner, the person or entity chosen by the contractor to undertake the detailed feasibility studies shall report directly to the PEA;

x x x

“d. That Cebu City and Mandaue City shall enter into contract with Public Estates Authority for the reclamation project pursuant to E.O. 525. The PEA is authorized to determine the terms and conditions necessary for the implementation of the aforecited conditions including specification of the sharing scheme and other requirements of government entities on the reclaimed areas. Furthermore, the PEA is authorized to review, modify, and approve all contracts entered into or arising out of the reclamation project consistent with existing government regulations and national interests considerations. Finally, consideration of equity requires that option rights of first refusal for a period as may be determined by PEA, shall be granted to private entities which have made initial investments on the project.” (Emphasis ours)

In other words, herein private respondent was granted by said [p]residential directive option rights of first refusal to undertake the project because of the initial investments it made on the project.

On August 1, 1980, as provided in Presidential Memorandum directive dated August 13, 1979 to submit within twelve (12) months after the issuance of the said Presidential Memorandum directive the detailed feasibility study for approval and “to enable the PEA to exercise its responsibilities as the representative of the [n]ational

[g]overnment as land owner, the person or entity chosen by the contractor to undertake the detailed feasibility studies shall report directly to the PEA”, the Province of Cebu, the City of Mandaue, the City of Lapulapu and the Municipality of Cordova submitted said feasibility study to the President for approval, copy of which was attached as Annex “12” to respondents’ Comment.

The Province of Cebu and private respondent entered into, signed and executed a Confirmatory Agreement dated November 1979, by virtue of which the services of MALAYAN was contracted to undertake the preparation and making of the said Detailed and Integrated Development Plan on Land use, etc., of the Cebu South Reclamation Project at no cost to the Province of Cebu. Copy of said Confirmatory Agreement was attached as Annex “13” to the respondents’ Comment.

The said Confirmatory Agreement acknowledged that it was the private respondent which made initial investments in the Cebu South Reclamation Project and the entity granted the right of first refusal or option rights to undertake the project as follows:

“WHEREAS, the Memorandum dated 13 August 1979 embodied the proviso that option rights of first refusal shall be granted to private entities who have made initial investments in the reclamation projects;

WHEREAS, the MALAYAN INTEGRATED INDUSTRIES CORPORATION, which had made initial investments in the projects and had, as a matter of fact, been previously bound by a contract with the PROVINCE OF CEBU to undertake the reclamation project in South Cebu evidenced by Document No. 145; Page No. 30; Book No. VI; Series of 1977 before Notary Public Justino K. Hermosisima, by these presents have offered to undertake and prepare, for and in behalf of the PROVINCE OF CEBU, the detailed feasibility study for the reclamation of the areas in the Municipalities of Talisay and Cordova, Province of Cebu, in conjunction and coordination with the Cebu South and the Mandaue Reclamation Projects, and which offer had been accepted by the PROVINCE OF CEBU as the consequence of the Reclamation contract by and between the two entities similarly reconfirmed in a communication dated October 4, 1979;”

On January 4, 1980, a Confirmatory Agreement was entered into, executed and signed by and between the City of Cebu, and private respondent in which they confirmed, affirmed, approved and agreed that the Cebu South Reclamation Project dated January 15, 1979 between MALAYAN and BALLAST which was approved by the Province of Cebu and City of Mandaue and were approved in principle by then President Ferdinand E. Marcos, that its corresponding plan on land use, including technical, economic, marketing and financial feasibility studies of the Project be undertaken by the aforesaid Local Government units concerned and to be submitted to the PEA and the President of the Philippines within twelve (12) months after the issuance of the Presidential Memorandum directive dated August 13, 1979, and in compliance with the above-said requirements, the City of Cebu hired, awarded, engaged and contracted the services of private respondent to undertake and prepare in behalf of the City of Cebu the detailed and integrated development plan on land use, etc., of the Project covering the reclamation area of 400 to 625 hectares, more or less, without any single expense, funding and at no cost whatsoever to the City of Cebu. Copy of said Confirmatory Agreement[t] was attached as Annex “14” to the respondents’ Comment.

Again, the City of Cebu recognized the option right or right of first refusal of private respondent to undertake the project as the entity [which] had made initial investments in the project as follows:

“WHEREAS, the President also directed that option rights of first refusal shall be granted to private entities which have made initial investments in the reclamation projects;

WHEREAS, the MALAYAN INTEGRATED INDUSTRIES CORPORATION, which has made initial investments on the project, and in fact, was previously contracted by the Province of Cebu by virtue of Proclamation No 200-A, P.D. No. 3-A and Executive Order No. 525 to undertake the reclamation project for

and in the City of Cebu and the Municipality of Talisay, Province of Cebu, and prior to which MALAYAN INTEGRATED had already invested substantial sums of money, time and effort in preparatory activities on said reclamation projects, by these presents have offered to undertake the detailed and integrated development plan on land use, [including] feasibility studies as required by the President, and the CITY OF CEBU has accepted the said offer of MALAYAN INTEGRATED INDUSTRIES CORPORATION;”

On January 24, 1980, the Public Estates Authority (PEA) and the City of Cebu entered into a Memorandum of Understanding which recognized the pre-emptive right of plaintiff to undertake the project as recognized in the Presidential directive dated August 13, 1979.

“6. Pursuant to the Presidential Directive dated August 13, 1979, to accord pre-emptive rights for the actual prosecution of the reclamation project to private entities which have made initial investments on the project:”

Copy of said Memorandum of Understanding was attached as Annex “15” to respondents’ Comment.

On August 1, 1980, on the basis of the Confirmatory Agreement dated November 1979 between the Province of Cebu and private respondent and the Confirmatory Agreement dated January 4, 1980 between the City of Cebu and the City of Cebu have awarded, hired, engaged and contracted the services of private respondent to undertake and prepare, in behalf of the Province of Cebu and the City of Cebu without any single expense, funding and at no cost to said Province of Cebu and City of Cebu, the detailed and integrated development plan on land use, etc., of the Cebu South Reclamation Project, the Province of Cebu thru then Eduardo R. Gullas, the City of Cebu thru then City Mayor Florentino S. S. Solon, the city of Mandaue thru then City Mayor Demetrio M. Cortes, the City of Lapulapu thru then City Mayor Maximo V. Patalingjug, Jr., and the Municipality of Cordova, Cebu thru Municipal Mayor Celedonio B. Sitoy, filed and submitted on August 1, 1980 the corresponding Detailed and Integrated Development Plan on Land use, including technical, economic, marketing and financial feasibility studies of the Cebu South Reclamation Project for the final consideration and approval by the Public Estates Authority and the Office of the President and the President of the Philippines. Copy of said document was attached as Annex “12” to respondents’ Comment.

On August 12, 1980, private respondent, for and in behalf of the Province of Cebu, City of Cebu, City of Mandaue, City of Lapulapu, Municipality of Talisay, Municipality of Cordova, in relation to the above-said Memorandum dated August 1, 1980 as required, also filed and submitted to the Office of the President and the President of the Philippines thru the PEA the additional copies of the said complete Project Studies and the Detailed and Integrated Development Plan on Land Use, etc., of the Metro Cebu Reclamation and Development Project which includes the Cebu South Reclamation Project. Copy of said document was attached as Annex “16” to respondents’ Comment.

On September 29, 1980, on the basis of the aforesaid Memorandum dated August 1, 1980 the PEA, in its MEMO FOR THE PRESIDENT dated September 29, 1980 indorsed and recommended to the President the final consideration and approval of the Detailed and Integrated Development Plan on Land Use of the Cebu South Reclamation Project. Copy of said document was hereto attached as Annex “17” to the respondents’ Comment.

Since Septembe[r] 19, 1980, when the PEA approved the Metro Cebu Reclamation and Development Project covering the reclamation area of 4,910 hectares, which include the Cebu South Reclamation Project covering 625 hectares, and its corresponding detailed and integrated development plan on land use, etc., as per MEMO FOR THE PRESIDENT dated September 29, 1980, the President of the Philippines has not yet approved the detailed and integrated development plan on land use, including technical, economic, marketing and financial feasibility studies of the said project.

On December 29, 1995, the Office of the President thru President Staff Director Vicente A. Galang, issued 1st

Indorsement to the effect that the detailed and integrated development plan on land use of the project is still pending final consideration and approval by the [O]ffice of the President until now or at the present date. Copy of said resolution was attached as Annex “18” to the respondents’ Comment.

On January 12, 1996, the Office of the President thru Presidential Staff Director Vicente A. Galang, issued an official certification that the Cebu South Reclamation Proj[ect] covering 360 hectares, has already long been considered and approved by the Office of the President and the President of the Philippines as per Presidential Memorandum directive dated August 13, 1979 but its corresponding detailed and integrated development plan on land use, including technical, economic, marketing and financial feasibility studies of the project which was filed and submitted by the Province of Cebu, City of Cebu, City of Mandaue, City of Lapulapu and Municipality of Cordova with the PEA and the Office of the President on August 1, 1980 per Memorandum dated August 1, 1980 and approved by the PEA in favor of the above-mentioned Local Government units concerned per MEMO FOR THE PRESIDENT dated September 29, 1980, is still pending final consideration and approval by the Office of the President. Copy of said certification was attached as Annex ”19” to respondents’ Comment.

When the Province of Cebu and the City of Mandaue submitted to the President the Cebu South Reclamation Project for approval per memorandum dated February 7, 1979, it was premised on the following consideration as stated in the first paragraph of said memo:

“In our earnest desire to contribute our share to the program of Your Excellency and of our government on industrialization, industrial dispersal and regional development in the New Society, the Province of Cebu and the City of Mandaue have authorized, subject to your Excellency’s approval, pursuant to PD 3-A (ANNEX “A”), the reclamation of 625 and 360 hectares of foreshore and offshore lands in South Cebu from Pasil, Cebu City to Tangke, Talisay, Cebu by virtue of Presidential Proclamation No. 200-A, promulgated on May 22, 1967 (ANNEX “B”), which gives the province of Cebu the authority to administer these areas within the City of Cebu, and, in Mandaue City, from Subangdaku to the Cabahug Coastways, by virtue of Sec. 94 of Republic Act No. 5519, which vests ownership and possession of all foreshore lands and submerged lands of the public domain in the City of Mandaue (ANNEX “C”), respectively, under contracts of Reclamation and Port Development with Malayan Integrated Industries Corporation, hereto attached as Annexes “D” and “E”, which we believe offer the most advantageous terms for the Province of Cebu, and City of Mandaue and the National Government because not a single centavo will be spent by the government in return for its share in the reclaimed areas and the operation of the international and domestic port facilities thereof, not to mention the socio-economic impact that the projects will create in the Visayas and Mindanao.” (Emphasis ours)

This was so because under Executive Order No. 525 dated February 14, 1979, all reclamation projects are subject to approval by the President. After the reclamation project is approved by the President, the project shall be undertaken by the Public Estates Authority (PEA) or through a proper contract executed by the PEA with any person or entity. This is so provided in Section 1 of said Executive Order which reads as follows:

“SECTION 1 - The Public Estates Authority (PEA) shall be primarily responsible for integrating, directing, and coordinating all reclamation projects for and on behalf of the National Government. All reclamation projects shall be approved by the President upon recommendation of the PEA, and shall be undertaken by the PEA or through a proper contract executed by it with any person or entity; provided, that, reclamation projects of any National Government agency or entity authorized under its Charter shall be undertaken in consultation with the PEA upon approval of the President.”

In other words, the President does not approve reclamation contracts but approves only the reclamation project.

The President approved in principle the Cebu South Reclamation Project on August 13, 1979 as shown by Exhibit “A-13”. The approval was in principle only pending submission and presidential approval of a detailed and integrated feasibility study on the land use of said project. What is unique in said presidential approval was that it

recognized the reclamation contracts earlier entered into by plaintiff with the Province of Cebu and the City of Mandaue by giving plaintiff option rights of first refusal to undertake the project, when said presidential memorandum stated:

“ x x x x

Finally, considerations of equity requires that option rights of first refusal for a period as may be determined by PEA, shall be granted to private entities which have made initial investments on the project.”

The presidential memorandum also directed the PEA, City of Cebu and the City of Mandaue to enter into contracts with the PEA for the Cebu South Reclamation Project and the Mandaue Reclamation project, respectively.

Conformably, with said presidential directive, the PEA and the City of Cebu entered into a memorandum of understanding with respect to the Cebu South Reclamation project wherein paragraph 6 of its Section II, it [sic] provided that the City of Cebu was obliged “to accord pre-emptive rights for the actual prosecution of the reclamation project to private entities which have made initial investments on the project”, which entity is no other than herein plaintiff. This option of first refusal or pre-emptive rights of plaintiff to undertake the actual prosecution of the project has never been cancelled, or rescinded.

The herein private respondent filed this case for injunction when the respondents issued an invitation to bidders, Exhibit “A-21” particularly section 3.2 thereof which provides “for the conduct of tenders and subsequent evaluation of bids” for the Cebu South Reclamation Project. In other words, the petitioners were going to entertain bids from private contractors for the undertaking of the Cebu South Reclamation Project in violation of the preemptive rights or right of first refusal of private respondent to prosecute the project.”[6]

In a Resolution dated March 27, 1997, the Court granted petitioners’ prayer and issued a temporary restraining order enjoining the trial judge from enforcing the assailed orders and from conducting further proceedings in this case.[7]

The Issues

In their Memorandum dated July 30, 1997, petitioners summarized the issues as follows:[8]

“I

Whether or not respondent judge gravely abused his discretion in issuing the orders dated 22 February 1996 and 18 March 1996, in contumacious violation of Presidential Decree No. 1818, and Supreme Court Administrative Circulars Nos. 13-93 and 68-94.

II

Whether or not, in grave abuse of discretion, the order dated 22 February 1996 and the order granting the writ of preliminary injunction had the effect of practically deciding the case on the merits.

III

Whether or not respondent judge acted with grave abuse of discretion amounting to lack or excess of jurisdiction in granting the writ of preliminary injunction, as the applicant, [R]espondent Malayan, had no clear and unmistakable right to be protected by the injunctive writ.

IV

Respondent judge gravely abused his discretion in not dismissing the complaint outright, the alleged cause of

action being admittedly premature, and a mere expectancy, or having otherwise been barred by prescription and/or laches.

V

Whether respondent judge gravely abused his discretion in issuing the order dated 12 March 1996, reconsidering his earlier order of voluntary inhibition, there being strong grounds -- as respondent judge himself admits -- for his voluntary inhibition.

VI

Whether or not, as claimed by private respondent, the omnibus motion to dismiss filed below by petitioners was a mere scrap of paper.

VII

Whether or not, as claimed by private respondent, a motion for reconsideration was necessary before the filing of the present petition.”

The first, second, third and fourth issues are closely related and will be discussed together.

The Court’s Ruling

The petition is meritorious.

First Issue:

Preliminary Injunction Void and Improper

Section 1 of PD 1818 distinctly provides that “[n]o court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project x x x of the government, x x x to prohibit any person or persons, entity or government official from proceeding with, or continuing the execution or implementation of any such project, x x x or pursuing any lawful activity necessary for such execution, implementation or operation.”[9] At the risk of being repetitious, we stress that the foregoing statutory provision expressly deprives courts of jurisdiction to issue injunctive writs against the implementation or execution of an infrastructure project.[10]

In the case at bar, the assailed March 18, 1996 Order of respondent judge specifically enjoined petitioners from implementing their Memorandum of Agreement dated September 11, 1995[11] (except as to the Cebu South Coastal Road), which pertains to the implementation of the Metro Cebu Development Project, Phase III, a major component of which is the Cebu South Reclamation Project. The petitioners were also enjoined from acting on or implementing all other contracts involving the said reclamation project. The issuance of said writ of preliminary injunction evidently constitutes a blatant violation of PD 1818. The assailed Order is therefore void for being issued with grave abuse of discretion and without jurisdiction. On this ground alone, the Court may already grant the petition. Nonetheless, we will proceed to discuss the other issues raised.

Reclamation Is an Infrastructure Project

Private respondent claims that the Cebu South Reclamation Project is not an infrastructure project.[12] This is erroneous and misleading. In *Malayan Integrated Industries Corporation vs. Court of Appeals*,[13] the Court unequivocally held that “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” is an infrastructure project as contemplated under PD 1818.[14] Private respondent should know this not only because everyone is presumed to

know the law, but also because it was a principal party in that case.

Cebu South Reclamation Project

Approved by the President

Private respondent further contends that, in spite of the prohibition in PD 1818, the questioned injunctive writ may still validly issue against petitioners, because the latter have not sufficiently shown that (1) “[t]he City of Cebu has a contract with the Public Estates Authority (PEA) to undertake the Cebu South Reclamation Project under P.D. 3-A,” (2) “[t]he PEA has favorably endorsed the Cebu South Reclamation Project for approval by the President pursuant to Executive Order No. 525,” and (3) “[t]he President has approved the Cebu South Reclamation Project pursuant to P.D. 525.”[15] The Court is not persuaded.

In the August 13, 1979[16] Memorandum on the Cebu South and Mandaue Reclamation Project, the President of the Philippines addressed this clear statement to the city mayors of Cebu and Mandaue, the chairman of the PEA and others concerned: “Pursuant to P.D. 3-A and E.O. 525, and upon recommendation of the Public Estates Authority (PEA), the reclamation project covering 985 ha[,] more or less, of Cebu South and Mandaue foreshore areas is hereby approved in principle; and the City of Cebu and the City of Mandaue are hereby authorized to undertake the reclamation of subject areas x x x.”[17] Furthermore, even the certification from the Office of the President dated January 12, 1996,[18] presented in evidence by respondent itself, certifies that the Cebu South (and Mandaue) Reclamation Project “has been previously considered and approved by the Office of the President and by the President of the Philippines, then His Excellency President Ferdinand E. Marcos, in favor of the Province of Cebu, City of Cebu, City of Mandaue, the Public Estates Authority and others concerned as the proponents x x x.”[19] The approved reclamation project is distinct from the reclamation contract itself.

Private Respondent Has No Vested

Right Violated by a Public Bidding

Private respondent argues that PD 1818 cannot be invoked to stop the issuance of a preliminary injunction in this case, as the acts of petitioners are tantamount to a violation of its vested rights. It claims “ x x x a right to seek judicial intervention and relief when petitioners violated its right of first refusal by issuing invitations to bid the project to other contractors, without affording private respondent its right of first refusal.”[20] We disagree.

Undisputed is the fact that the private respondent and the government have not entered into any validly approved and effective reclamation contract covering the Cebu South Reclamation Project. The City of Cebu and private respondent’s Contract of Reclamation dated October 31, 1977[21] was never approved by the President. Their Confirmatory Agreement dated January 4, 1980 merely shows that the City of Cebu engaged private respondent “to undertake and prepare the detailed and integrated development plan on land use, including technical, economic, marketing and financial feasibility studies x x x” of the Cebu South Reclamation Project.[22] Incidentally, the aforementioned certification, issued by the Office of the President on January 12, 1996, manifests that private respondent’s development plan and feasibility studies, submitted pursuant to the said Confirmatory Agreement, are the items pending final consideration and approval of the President.

Private respondent alleges that the injunctive writ merely protected its alleged right of first refusal which arose from the President’s August 13, 1979 Memorandum addressed to the concerned public officials, stating that “considerations of equity [require] that option rights of first refusal for a period as may be determined by the PEA shall be granted to private entities which have made initial investments on the project.”[23] This memorandum, however, must be construed in harmony with the aforesaid PD 1818 and PD 1594,[24] which prescribed the policies, guidelines, rules and regulations for government infrastructure contracts. Said memorandum certainly could not be construed as a law authorizing a repeal of PD 1818 and PD 1594. Indeed, laws are repealed only by

subsequent ones,[25] whether expressly or impliedly. There is no express repeal of said laws, as they were not even mentioned in the memorandum, either by number or by text. Neither can there be an implied repeal, since it was not “convincingly and unambiguously demonstrated” that the mention in the memorandum of a right of first refusal was so repugnant and inconsistent with said laws as to defy harmonization. Basic is the rule in statutory construction that implied repeals are not favored.[26] In addition, the memorandum was merely an expression of an executive directive to subordinates, not a legislative enactment. Hence, it cannot obviate the operation of PD 1818 and PD 1594. Section 4 of PD 1594 provides:

“SEC. 4. Bidding. -- Construction projects shall generally be undertaken by contract after competitive public bidding. Projects may be undertaken by administration or force account or by negotiated contract only in exceptional cases where time is of the essence, or where there is lack of qualified bidders or contractors, or where there is a conclusive evidence that greater economy and efficiency would be achieved through this arrangement, and in accordance with provision of laws and acts on the matter, subject to the approval of the Ministry of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be, if the project cost is less than P1 Million, and of the President of the Philippines, upon the recommendation of the Minister, if the project cost is P1 Million or more.”

In the award of government contracts, the law requires a competitive public bidding. This is reasonable because “[a] competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition. It is a mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts.”[27] Lawful and laudable, therefore, is the petitioners’ Memorandum of Agreement mandating the City of Cebu to conduct a competitive public bidding in implementing the Cebu South Reclamation Project. The conduct of such public bidding is not violative of private respondent’s alleged vested right. In the Court’s viewpoint, the said right may be considered for the purpose of awarding the contract of reclamation, only when the latter’s proposal are in all aspects equal to the bid of another proponent. In this kind of situation, the private respondent’s claim to a right of first refusal indeed entitles it to priority in the award of the contract. But this claimed right of first refusal cannot bar another proponent from submitting a bid or proposal.

Note, however, that under Section 4 of PD 1594, a negotiated contract may be allowed in exceptional circumstances enumerated therein, subject to approval by the President. Executive Order No. 380,[28] which took effect November 27, 1989, also provided for the President’s approval of negotiated infrastructure contracts, the cost of which, for the Department of Transportation and Communications, amounts to P100 million and, for other departments and government corporations, P50 million. Since the project cost of the Cebu South Reclamation Project is over 4 billion pesos,[29] it is ineluctable that the President’s approval is required. Consequently untenable is private respondent’s contention that its right of first refusal ipso facto entitles it to a contract of reclamation, because it fails to take into consideration the legal requirement that negotiated infrastructure contracts with costs beyond the specified ceiling must be approved by the President. Private respondent has no legal basis to claim that, because of its initial expenses in preparing its proposed plans and feasibility studies, it could dispense with or, worse, arrogate unto itself the President’s power to ultimately decide or approve a contract of reclamation. In *Malayan Integrated Industries Corporation vs. Court of Appeals*,[30] the Court recognized the President’s authority to disapprove the reclamation contract proposed by private respondent despite the latter’s initial investments; in that case, the President approved, instead, the contract between the City of Mandaue and F.F. Cruz, Inc. et al.[31]

Issuance of Writ of Preliminary Injunction Unjustified

From the foregoing discussion, it is clear that the respondent judge gravely abused his discretion in issuing the Writ of Preliminary Injunction. Section 3, Rule 58 of the Rules of Court, enumerates the grounds for the issuance

of a preliminary injunction. Although private respondent alleged these grounds,[32] respondent judge had the duty to take judicial notice[33] of PD 1818 and PD 1594. These laws, based on the foregoing discussion, ineludibly show that private respondent had no right to the relief it sought. It is well-settled that, “before a writ of preliminary injunction may be issued, there must be a clear 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 the said right.”[34] In hindsight, the respondent judge’s grant of the writ is truly regrettable, as it unnecessarily delayed the implementation of an important infrastructure project, a delay which had far-reaching consequences on the economic development and interest of Cebu, as well as the nation.

Second Issue:

Respondent Judge’s Voluntary Inhibition

Petitioners[35] contend that the respondent judge gravely abused his discretion, when he made a volte face on his previous Order dated February 26, 1996[36] inhibiting himself from hearing the case. In issuing said Order, Judge Burgos noted that Petitioner Tomas Osmeña’s Motion for Inhibition raised the ground of “prejudgment” on the basis of statements made in his Order dated February 22, 1996. Judge Burgos disposed as follows:

“WHEREFORE, premises considered, the motion is granted, and accordingly, in order to disabuse the mind of the movant and to further faithfully serve the cause of justice, the Presiding Judge of this Court hereby voluntarily inhibits himself from further sitting in the present case with instruction to the Branch Clerk of Court to send the records to the Office of the Clerk of Court for approval by the Honorable Executive Judge Priscila S. Agana for final re-raffling.

The scheduled hearing for February 26, 1996 is cancelled.

SO ORDERED.”[37]

However, respondent judge reversed his voluntary inhibition,[38] meekly stating in his Order dated March 12, 1996 that “[t]he allegation of prejudgment and partiality is so bare and empty as movant Osmeña failed to present sufficient ground or proof for the Presiding Judge to disqualify himself. The Judge realized the mistake in granting the motion for inhibition when defendant Osmeña misled the Court in asserting that on the same day February 26, 1996, he would be filing an administrative case against the Judge for violation of PD 1818 and Supreme Court Circulars issued in relation to said decree x x x. In that eventuality, Osmeña said, the Judge would be bias[ed] and partial to him because he [was] the complainant in the pending administrative case.”[39]

We find merit in petitioners’ contention. Judge Burgos inhibited himself on the basis of Petitioner Osmeña’s allegation of prejudgment. In reversing his voluntary inhibition, respondent judge nebulously branded Osmeña’s allegations as “so bare and empty.” Judge Burgos’ claim that he was misled by Osmeña’s threat of an administrative case is obviously a mere afterthought that does not inspire belief. Although inhibition is truly discretionary[40] on the part of the judge, the flimsy reasons proffered above are insufficient to justify reversal of his previous voluntary inhibition. As aptly pointed out by petitioners in their Memorandum,

“‘ xxx a judge may not rescind his action and reassume jurisdiction where good cause exists for the disqualification. Furthermore, because a presumption arises, by reason of the judge’s prior order of disqualification, of the existence of the factual reason for such disqualification, where the regular judge who has been disqualified revokes the order of disqualification, and objection is made to such revocation, it is not sufficient for the judge to enter an order merely saying that he or she is not disqualified; the record should clearly reveal the facts upon which the revocation is made.’ (46 Am Jur 2d § 234, p. 321)”[41]

We deem it important to point out that a judge must preserve the trust and faith reposed in him by the parties as an impartial and objective administrator of justice. When he exhibits actions that give rise, fairly or unfairly, to

perceptions of bias, such faith and confidence are eroded, and he has no choice but to inhibit himself voluntarily. It is basic that “[a] judge may not be legally prohibited from sitting in a litigation, but when circumstances appear that will induce doubt [on] his honest actuations and probity in favor of either party, or incite such state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people’s faith in the courts of justice is not impaired. The better course for the judge is to disqualify himself.”[42]

Third Issue:

Omnibus Motion Ineffective?

Private respondent insists that the petitioners’ Omnibus Motion[43] dated February 14, 1996 is a mere scrap of paper, as it contained a notice of hearing addressed only to the clerk of court with no proof of its service to the opposing counsel.[44] Private respondent is clutching at straws. The petitioners’ Omnibus Motion was filed pursuant to the trial court’s own order to show cause why the injunction should not issue. It actually partakes of a brief or memorandum showing the trial court’s lack of jurisdiction to issue the preliminary injunction. The Omnibus Motion raised a very important matter which the court itself could have ruled on, even *motu proprio*, considering that a jurisdictional question may be raised at any time, even for the first time on appeal.[45] Moreover, as expressed by petitioners, the issue is now moot, since the private respondent filed an Amended Complaint giving petitioner another fifteen days to file a responsive pleading. Within the said period, “petitioners filed a Manifestation and Motion dated 7 March 1996, adopting the Omnibus Motion of 14 February 1996 and the Motion for Reconsideration with Cautionary Notice against the Amended Complaint and the application for writ of preliminary injunction therein contained.”[46]

Fourth Issue: Motion for Reconsideration Actually Filed

Finally, private respondent alleges that the petition should be dismissed on the ground that petitioners did not file a motion for reconsideration.[47] This allegation is negated by the simple fact that a Motion for Reconsideration with Cautionary Notice,[48] although denied by the trial court, was actually filed by petitioners within the prescribed period.

Epilogue

Litigants, lawyers and judges sometimes forget that they share the responsibility of unclogging the dockets of the judiciary. As a lamentable consequence, this Court is compelled to resolve cases which are utterly bereft of merit. This is one of those cases.

Private Respondent Malayan Integrated Industries Corporation (“Malayan,” for brevity) was the petitioner in *Malayan Integrated Industries, Corp. vs. Court of Appeals, et al.*, [49] in which this Court, citing PD 1818, held that no writ of injunction may be issued to prevent the implementation of the reclamation project along the coast of Mandaue City, which was deemed an infrastructure project. In the present case, Private Respondent Malayan, nevertheless sought again the issuance of an injunctive writ to restrain the implementation of a similar reclamation project in adjacent Cebu City. In initiating the present proceedings, private respondent evidently ignored our earlier pronouncement and unnecessarily clogged the dockets of our courts.

The respondent trial judge, on the other hand, abetted Malayan’s brazen disregard of this Court’s earlier ruling. Worse, he ruled that the earlier case did not apply, because “E.O. No. 380 was not presented by the parties for consideration by the High Court.”[50] He maintained that EO 380, dated November 27, 1989, did not include reclamation projects in the definition of infrastructure projects.

As earlier stated, the ruling of the trial court is lamentable. We note that, in the first place, EO 380 did not purport to be an exclusive enumeration of infrastructure projects. Moreover, the Supreme Court itself held -- after the

effectivity of EO 380 -- that reclamation projects are deemed infrastructure projects, thereby resolving the present question with finality. It is unfortunate that the trial court cavalierly contravened a categorical ruling of the Supreme Court. But even more deplorable, it insinuated that this Court did not take into account all applicable extant laws. To propound such view is to undermine the people's trust and confidence in the judiciary. This, we cannot countenance. It is opportune to remind judges of their sworn duty to follow the doctrines and rulings of this Court.

In issuing writs of injunction, judges should observe the admonition of the Court in *Olalia vs. Hizon*:^[51]

“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.

Every court should remember that 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.”

WHEREFORE, the petition is hereby GRANTED. The Orders of the Regional Trial Court in Civil Case No. CEB-18292, dated February 22, 1996, March 12, 1996 and March 18, 1996, are REVERSED and SET ASIDE. The temporary restraining order earlier issued is MADE PERMANENT. Respondent judge is ordered to INHIBIT himself from further hearing this case. Let Civil Case No. CEB-18292 be re-raffled and the proceedings therein proceed with all deliberate dispatch.

SO ORDERED.

Davide, Jr.(Chairman), Bellosillo, Vitug, and Quisumbing, JJ., concur.

[1] 7th Judicial Region, Branch 17.

[2] Rollo, p. 47.

[3] Ibid., p. 55.

[4] Ibid., p. 52. The case was deemed submitted for resolution on August 20, 1997 when this Court received petitioners' Memorandum.

[5] Petition, pp. 9-16; rollo, pp. 11-18.

[6] Memorandum for Respondents, pp. 1-16; rollo, pp. 349-364.

[7] Rollo, pp. 142-145.

[8] Pp. 9-10; rollo, pp. 407-408.

[9] See also Supreme Court Administrative Circular 68-94 dated November 3, 1994.

[10] *Republic of the Philippines vs. Salvador Silverio and Big Bertha Construction*, GR No. 108869, p. 5, May 6, 1997.

[11] Rollo, pp. 71-76.

[12] Memorandum for the Respondents, p. 18; rollo, p. 366.

- [13] 213 SCRA 640, September 4, 1992, per Griño-Aquino, J.
- [14] Ibid., pp. 649-650.
- [15] Memorandum for the Respondents, p. 24; rollo, p. 372.
- [16] Rollo, pp. 139-140.
- [17] Ibid, p. 139.
- [18] Ibid, pp. 291-293.
- [19] Ibid, p. 292. See also the Memorandum of Understanding dated January 24, 1980, which was executed by the PEA and the City of Cebu; rollo, pp. 273-275.
- [20] Memorandum for the Respondents, p. 29, rollo, p. 377.
- [21] Rollo, pp. 193-197.
- [22] Ibid., pp. 136-138.
- [23] Rollo, p. 140.
- [24] Effective on June 11, 1978.
- [25] Art. 7, Civil Code.
- [26] Frivaldo vs. Commission on Elections, 257 SCRA 727, 743-744, June 28, 1996.
- [27] National Food Authority vs. Court of Appeals, 253 SCRA 470, 481, February 9, 1996, per Puno, J.; citing Danville Maritime, Inc. vs. Commission on Audit, 175 SCRA 701, July 28, 1989 and Malaga vs. Penachos, 213 SCRA 516, September 3, 1992.
- [28] Rollo, pp. 183-184.
- [29] NEDA Board Resolution No. 1 (s. 1995), p. 1; rollo, p. 63.
- [30] Supra.
- [31] Ibid., p. 649.
- [32] Private Respondent's Amended Complaint, pp. 33-35; rollo, pp. 114-116.
- [33] Section 1, Rule 129 of the Rules of Court.³³
- [34] China Banking Corporation vs. Court of Appeals, 265 SCRA 327, 343, December 5, 1996, per Francisco, J.
- [35] Memorandum for Petitioners, pp. 39-44; rollo, pp. 437-442.
- [36] Rollo, pp. 134-135.
- [37] Rollo, p. 135.
- [38] Ibid., pp. 53-55.
- [39] Ibid., p. 54.
- [40] See also Pineda, Ernesto L., Legal and Judicial Ethics, p. 376, 1994 ed.
- [41] Memorandum for Petitioners, p. 43; rollo, p. 441.

[42] Bautista vs. Rebueno, 81 SCRA 535, 538, February 22, 1978, per Fernando, J.

[43] Supra.

[44] See Memorandum for the Respondents, pp. 33-38; rollo, pp. 381-386.

[45] De Leon vs. Court of Appeals, 245 SCRA 166, 172, June 19, 1995.

[46] Memorandum for Petitioners, p. 45.

[47] Comment, pp. 33-34; rollo, pp. 179-180.

[48] Rollo, pp. 330-341.

[49] Supra.

[50] RTC Order dated February 22, 1996, p. 2; rollo, p. 48.

[51] 196 SCRA 665, 672-273, May 6, 1991, per Cruz, J.

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