

THE CITY MAYOR OF BAGUIO AND THE HEAD OF THE DEMOLITION TEAM – ENGR. NAZITA BAÑEZ, PETITIONERS, VS. ATTY. BRAIN MASWENG, REGIONAL HEARING OFFICER, NCIP-CAR, THE HEIRS OF JUDITH ...

G.R. No. 165003. February 02, 2010

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review on certiorari[1] of the March 31, 2004 decision[2] and July 23, 2004 resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 80613.

Respondents Judith K. Cariño, Jacqueline Cariño and the other heirs of Mateo Cariño and Bayosa Ortega are members of the Ibaloi tribe, an indigenous cultural tribe of Baguio City and Benguet Province. Their ancestors were grantees of a survey plan approved by the Director of Lands in 1920. Currently, they have pending petitions before the National Commission on Indigenous People (NCIP) for the validation of ancestral land claims covering a parcel of land in Resident Section "J" in Baguio City and Tuba, Benguet. A portion of the land being claimed by petitioners overlaps with the Baguio Dairy Farm, a government reservation under the supervision of the Department of Agriculture (DA).[4]

On June 29, 2003, respondents filed a petition for injunction (with prayer for the issuance of a temporary restraining order [TRO] and/or a writ of preliminary injunction) with the NCIP[5] seeking to enjoin the mayor of Baguio City and the head of the city's demolition team from implementing Demolition Order No. 17, series of 2003.[6] The order, issued by the office of the mayor upon complaint of the DA, directs the demolition of shanties and other structures within the premises of the Baguio Dairy Farm belonging to private respondents which were then undergoing construction or were recently built without the required permits. In response, public respondent Brain Masweng, regional hearing officer of the NCIP in the Cordillera Administrative Region, issued a 72-hour TRO.

In a resolution dated July 21, 2003, respondent Masweng granted the application for a writ of preliminary injunction. Petitioners' motion for reconsideration was denied.

The case was elevated to the Court of Appeals (CA) via a petition for certiorari filed by petitioners. Upholding the NCIP's jurisdiction to hear and decide main actions for injunction, the CA denied both the petition and the subsequent motion for reconsideration.

Hence, this petition.[7]

Petitioners contend that injunction, as an original and principal action, falls within the jurisdiction of the regular courts. The NCIP may issue TROs and writs of preliminary injunction only as an auxiliary remedy to a pending case before it. Petitioners also assert that there was no factual and legal basis for the NCIP's issuance of a writ of preliminary injunction.

We have already ruled on the power of the NCIP to issue a writ of preliminary injunction in *City Government of Baguio City v. Atty. Masweng*.^[8] The facts of that case are practically identical to those of this case save for the fact that the land being claimed there is a portion of the Busol Forest Reserve. The petitioners in that case sought the intervention of this Court after the CA upheld the jurisdiction of the NCIP and affirmed the TROs issued by the latter.

In *City Government of Baguio City*, we held:

xxx the NCIP may issue temporary restraining orders and writs of injunction without any prohibition against the issuance of the writ when the main action is for injunction. The power to issue temporary restraining orders or writs of injunction allows parties to a dispute over which the NCIP has jurisdiction to seek relief against any action which may cause them grave or irreparable damage or injury. (emphasis provided)

Private respondents base their claim to the disputed area on an alleged time-immemorial possession and a survey plan awarded to their forebears by the Director of Lands in 1920. In 1940, Proclamation No. 603 withdrew the contested area from sale or settlement and reserved the same for animal breeding station purposes, subject to private rights. The claim of respondents on the subject land is still pending before the NCIP. Thus, their rights are mere expectations, not the present and unmistakable right required for the grant of the provisional remedy of injunction.^[9] Moreover, the structures subject of the demolition order were either built or being constructed without the requisite permit at the time the demolition order was issued in 2003. Hence, private respondents were not entitled to the preliminary injunction issued by the NCIP.

WHEREFORE, the instant petition is hereby GRANTED. The decision of the Court of Appeals in CA-G.R. SP No. 80613 dated March 31, 2004 and its resolution dated July 23, 2004 are REVERSED and SET ASIDE.

The resolution dated July 21, 2003 of the National Commission on Indigenous Peoples granting the application for writ of preliminary injunction is also hereby REVERSED and SET ASIDE.

No costs.

SO ORDERED.

Carpio[*], Velasco, Jr., Nachura, and Peralta, JJ., concur.

[*] Per Special Order No. 818 dated January 18, 2010.

[**] Respondents Cariños are also referred to as "Carino" in some parts of the records.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Eugenio S. Labitoria (retired) and concurred in by Associate Justices Mercedes Gozo-Dadole (retired) and Rosmari D. Carandang of the Fifth Division of the Court of Appeals. Rollo, pp. 26-31.

[3] *Id.*, p. 33.

[4] The Baguio Dairy Farm was created under Presidential Proclamation No. 603, series of 1940, signed by President Manuel Quezon, withdrawing a parcel of the public domain in Baguio City from sale or settlement for animal breeding station purposes.

[5] Particularly, the Regional Hearing Office of the Cordillera Administrative Region.

[6] The demolition order was based on investigation reports submitted by the City Engineer's Office and the

Public Order and Safety Division, Baguio City. Rollo, p. 40.

[7] The petition was accompanied by a prayer for a writ of preliminary injunction or TRO to prevent the CA from enforcing its decision. The Court, however, did not issue any TRO or injunctive writ in this case. This was because R.A. 8371 prohibits the issuance of a restraining order or preliminary injunction against the NCIP in any case, dispute or controversy arising from or necessary to its interpretation or the interpretation of other laws relating to indigenous cultural communities/indigenous peoples (ICCs/IPs) and ancestral domains.

[8] G.R. No. 180206, 4 February 2009, 578 SCRA 88, 98.

[9] In the absence of proof of a legal right and the injury sustained by the plaintiff, an order for the issuance of a writ of preliminary injunction will be nullified. (*Nisce v. Equitable PCI Bank, Inc.*, G.R. No. 167434, 19 February 2007, 516 SCRA 231, 253.)

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