

PROVINCE OF CAGAYAN, REPRESENTED BY HON. ALVARO T. ANTONIO, GOVERNOR, AND ROBERT ADAP, ENVIRONMENTAL AND NATURAL RESOURCES OFFICER, PETITIONERS, VS. JOSEPH LASAM LARA, RESPONDENT.

G.R. No. 188500. July 24, 2013

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

This is a direct recourse to the Court from the Decision[1] of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 5 (RTC), through a petition for review on certiorari[2] under Rule 45 of the Rules of Court, raising a pure question of law. In particular, petitioners assail the RTC's June 30, 2009 Decision in Civil Case No. 7077, enjoining them from disturbing the quarrying operations of respondent Joseph Lasam Lara (Lara).

The Facts

On September 14, 2007, Lara obtained an Industrial Sand and Gravel Permit[3] (ISAG Permit) from the Mines and Geosciences Bureau (MGB) of the Department of Environment and Natural Resources (DENR), authorizing him to conduct quarrying operations in a twenty-hectare area situated in Barangay Centro, Municipality of Peñablanca (Peñablanca), Cagayan (Permit Area) and extract and dispose of sand, gravel, and other unconsolidated materials from the Permit Area. For the same purpose, Lara obtained an Environmental Compliance Certificate[4] (ECC) from the DENR Environmental Management Bureau (EMB).[5]

On January 3, 2008, Jovy Balisi (Balisi), Lara's representative, went to the Cagayan Provincial Treasurer's Office (Treasurer's Office) to pay the extraction fee and other fees for Lara's quarrying operations but she was directed to first secure an Order of Payment from the Environmental and Natural Resources Officer, petitioner Robert Adap (ENRO Adap). However, when Balisi went to ENRO Adap, the latter refused to issue an Order of Payment. Despite various pleas from Balisi and Atty. Victorio N. Casauay (Atty. Casauay), Lara's counsel, ENRO Adap remained adamant with his refusal. This prompted Atty. Casauay to tender and deposit the amount of P51,500.00 with the Treasurer's Office corresponding to the said extraction fee and other related fees.[6]

On January 11, 2008, Lara commenced his quarrying operations. Later that day, however, a total of four trucks loaded with sand and gravel extracted from the Permit Area were stopped and impounded by several local officials.[7] Consequently, Lara filed an action for injunction with prayer for the issuance of a writ of preliminary injunction, docketed as Civil Case No. 7049, against the said officials, seeking to enjoin the stoppage of his quarrying operations. After due proceedings, a writ of preliminary injunction was issued enabling Lara to restart his business.[8]

Nonetheless, on March 17, 2008, Lara received a Stoppage Order[9] dated March 13, 2008 (Stoppage Order) this time from Cagayan Governor Alvaro T. Antonio (Gov. Antonio), directing him to stop his quarrying operations for the following reasons: (a) the ISAG Permit was not in accordance with Republic Act No. (RA) 7942,[10] otherwise known as the "Philippine Mining Act of 1995," and its implementing rules and regulations; (b) Lara's

failure to pay sand and gravel fee under Provincial Ordinance No. 2005-07; and (c) [Lara's] failure to secure all necessary permits or clearances from the local government unit concerned as required by the [ECC].[11] Hence, Lara filed the present action for injunction and damages with an urgent and ex-parte motion for the issuance of a temporary restraining order and/or preliminary injunction before the RTC, docketed as Civil Case No. 7077.

In their Answer dated June 10, 2008, petitioners raised the following defenses: (a) the mere issuance of the ISAG Permit does not give Lara the right to commence his quarrying operations as he still had to comply with the terms and conditions stated therein; (b) Lara has neither secured all the necessary permits nor paid the local fees and taxes; and (c) Gov. Antonio was merely performing his duty to enforce all laws and ordinances relative to the governance of the Province of Cagayan pursuant to the provisions of RA 7160,[12] otherwise known as the "Local Government Code of 1991." [13]

In an Order[14] dated August 11, 2008, the RTC granted Lara's application for a writ of preliminary injunction based on a prima facie finding that he is authorized to extract gravel and sand from the Permit Area. Petitioners filed a motion for reconsideration[15] which was, however denied on September 26, 2008.[16]

During the pre-trial, the parties stipulated on the following facts: (a) that Lara was able to secure an ISAG Permit from the MGB and an ECC from the DENR-EMB; (b) that Lara deposited the amount of P51,500.00 with the Treasurer's Office for the extraction and other related fees; and (c) that Gov. Antonio issued a Stoppage Order directing Lara to stop the quarrying operations in the Permit Area. The parties also determined that the submission of documentary evidence would be sufficient to reach a decision and as such, the RTC directed them to simultaneously file their respective memoranda.[17]

The RTC Ruling

In a Decision[18] dated June 30, 2009, the RTC made permanent the writ of preliminary injunction and thus, enjoined petitioners from stopping or disturbing Lara's quarrying operations.

It held that Lara legally acquired the right to operate his quarrying business, as evidenced by the ISAG Permit and ECC issued by the MGB and the EMB, respectively, which are the government agencies tasked to grant or deny any application for quarrying of industrial sand and gravel.[19] In this regard, the RTC observed that if Gov. Antonio perceived any defect in Lara's ISAG Permit, the proper recourse would have been to bring the matter to the attention of the MGB and not to issue a Stoppage Order.[20] It further noted that Lara could not pay the extraction and other related fees only because ENRO Adap adamantly refused to issue an Order of Payment. In this relation, the RTC concluded that there was substantial compliance with the requirements since Lara, in good faith, tendered and deposited the amount of P51,500.00 with the Treasurer's Office, which can be treated as Lara's payment of the pertinent fees.[21] Finally, the RTC found no need to touch on the necessity of securing a mayor's permit before starting his quarrying operations, given that it is the main issue in another case, Civil Case No. 7049, pending before the same court.[22]

Aggrieved, petitioners sought direct recourse to the Court via the instant petition.

The Issue Before the Court

The primordial issue raised for the Court's resolution is whether the RTC properly issued the permanent injunction subject of this case.

Among others, petitioners argue that despite the issuance of the ISAG Permit, Lara has yet to comply with its terms and conditions – as he has yet to secure the necessary permits and clearances from the local government unit concerned – and hence, remains to be proscribed from conducting any quarrying operations.[23]

On the other hand, Lara maintains that the MGB and DENR-EMB had already authorized him to extract sand and

gravel from the Permit Area, as evidenced by the ISAG Permit and ECC, thereby dispensing with the need to secure any permit from the local government. In any case, he contends that the only reason why he failed to secure such permits was because the local government officials deliberately refused to process his applications without any legitimate reason whatsoever.[24]

The Court's Ruling

The petition is meritorious.

It is well-settled that a writ of injunction would issue upon the satisfaction of two (2) requisites, namely: (a) the existence of a right to be protected; and (b) acts which are violative of the said right. In the absence of a clear legal right, the issuance of the injunctive relief constitutes grave abuse of discretion. Injunction is not designed to protect contingent or future rights. Where the complainant's right is doubtful or disputed, injunction is not proper. The possibility of irreparable damage without proof of actual existing right is not a ground for an injunction.[25]

In order for an entity to legally undertake a quarrying business, he must first comply with all the requirements imposed not only by the national government, but also by the local government unit where his business is situated. Particularly, Section 138(2) of RA 7160[26] requires that such entity must first secure a governor's permit prior to the start of his quarrying operations, viz:

SECTION 138. Tax on Sand, Gravel and Other Quarry Resources. – x x x.

The permit to extract sand, gravel and other quarry resources shall be issued exclusively by the provincial governor, pursuant to the ordinance of the sangguniang panlalawigan. (Emphasis and underscoring supplied)

x x x x

In connection thereto, the Sangguniang Panlalawigan of Cagayan promulgated Provincial Ordinance No. 2005-07, Article H, Section 2H.04 of which provides:

SECTION 2H.04. Permit for Gravel and Sand Extraction and Quarrying. – No person shall extract ordinary stones, gravel, earth, boulders and quarry resources from public lands or from the beds of seas, rivers, streams, creeks or other public waters unless a permit has been issued by the Governor (or his deputy as provided herein) x x x. (Emphasis and underscoring supplied)

A plain reading of the afore-cited provisions clearly shows that a governor's permit is a pre-requisite before one can engage in a quarrying business in Cagayan. Records, however, reveal that Lara admittedly failed to secure the same; hence, he has no right to conduct his quarrying operations within the Permit Area. Consequently, he is not entitled to any injunction.

In view of the foregoing, the Court need not delve into the issue respecting the necessity of securing a mayor's permit, especially since it is the main issue in another case, Civil Case No. 7049, which remains pending before the court a quo.

WHEREFORE, the petition is GRANTED. Accordingly, the June 30, 2009 Decision of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 5 in Civil Case No. 7077 is hereby REVERSED and SET ASIDE.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Perez, JJ., concur.

[1] Rollo, pp. 41-50. Penned by Judge Jezarene C. Aquino.

[2] Id. at 19-39.

[3] Id. at 59-63.

[4] Id. at 73-78.

[5] Id. at 41-42.

[6] Id. at 20-21, 42, and 48-49.

[7] Id. at 42. Referring to the Mayor of Peñablanca, Board Member Taguinod and other local officials.

[8] Id. at 42-43.

[9] Id. at 65.

[10] “AN ACT INSTITUTING A NEW SYSTEM OF MINERAL RESOURCES EXPLORATION, DEVELOPMENT, UTILIZATION AND CONSERVATION.”

[11] Rollo, p. 43.

[12] “AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991.”

[13] Rollo, pp. 43-44.

[14] Id. at 51-54.

[15] Id. at 66-70.

[16] Id. at 71.

[17] Id. at 44-45.

[18] Id. at 41-50.

[19] Id. at 46-47.

[20] Id. at 48.

[21] Id. at 48-49.

[22] Id. at 49.

[23] Id. at 25-37.

[24] Id. at 111.

[25] BP Philippines, Inc. (Formerly Burmah Castrol Philippines, Inc.) v. Clark Trading Corporation, G.R. No. 175284, September 19, 2012, 681 SCRA 365, 375, citing Manila International Airport Authority v. Rivera Village Lessee Homeowners Association Incorporated, 508 Phil. 354, 375 (2005).

[26] “AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991.”

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