

SECOND DIVISION

[G.R. No. 219792, July 29, 2020]

**RUSSELL Q. BERNAL, IN HIS CAPACITY AS THE AUTHORIZED
MANAGING OFFICER OF CIARA CONSTRUCTION/BERSON
CONSTRUCTION & TRADING (A JOINT VENTURE), PETITIONER,
VS. HON. FELIPE M. DE LEON, JR., IN HIS CAPACITY AS
CHAIRMAN OF THE NATIONAL COMMISSION FOR CULTURE AND
THE ARTS (NCCA), HON. ROGELIO L. SINGSON, IN HIS
CAPACITY AS SECRETARY OF THE DEPARTMENT OF PUBLIC
WORKS AND HIGHWAYS (DPWH), HON. MELANIO C. BRIOSOS,
IN HIS CAPACITY AS REGIONAL DIRECTOR OF THE DEPARTMENT
OF PUBLIC WORKS AND HIGHWAYS - REGIONAL OFFICE I, AND
MOST REV. RODOLFO BELTRAN, D.D., BISHOP OF LA UNION,
RESPONDENTS,**

RESOLUTION

INTING, J.:

Before the Court is a Petition^[1] for *Certiorari* and Prohibition with Prayer for the Issuance of Temporary Restraining Order under Rule 65 under the Rules of Court against the Cease and Desist Order^[2] (CDO) dated February 21, 2015 issued by the National Commission for Culture and the Arts (NCCA), through its Chairman Felipe M. De Leon, Jr. (Chairman De Leon), against the Department of Public Works and Highways (DPWH) enjoining the implementation of the road widening project (project), including demolition works along the national highway in the Municipality of Agoo, Province of La Union. The CDO states that the project will potentially affect presumed important cultural properties in the area and as such, it could not be undertaken without the coordination and concurrence of the NCCA and other pertinent cultural agencies, such as the National Museum or the National Historical Commission of the Philippines.

The Antecedents

In a Letter^[3] dated April 4, 2014 addressed to the District Engineer, Office of the District Engineer, DPWH, La Union Second District Engineering Office, Acting Assistant District Engineer and Chief of the Maintenance Section, Raul P. Gali (Gali), submitted the following findings and observations:

1. The Basilica of Our Lady of Charity and Plaza de la Virgen are located along the right shoulder of Manila North Road right before and after the MNR — Agoo Beach Road intersection, respectively,
2. That the northern portion of the Basilica's plant boxes measures 9.40meters from the centerline of the national road, while

8.50meters of the opposite side;

3. That the northern portion of the plaza's concrete fence measures 6.90meters from the centerline of the national road, while 9.80meters on the opposite side;
4. That said fence hampers the smooth flow of traffic of northbound vehicles.^[4]

Gali stated that the road section is included in the list of proposed road widening for fiscal year 2015 Infrastructure Program; and that the Basilica's plant boxes and concrete fence are within the 20-meter road right-of-way (20m RROW) which are considered obstructions under Section 23 of Presidential Decree No. (PD) 17.^[5] Thus, District Engineer Leopoldo F. Mendoza (Mendoza) wrote a Letter^[6] dated April 14, 2014 to Most Rev. Rodolfo P. Beltran, D.D. (Bishop Beltran) requesting for the voluntary removal/relocation of the portions of the structures that encroached the 20m RROW.

On May 23, 2014, Bishop Beltran wrote a Letter^[7] addressed to DPWH Secretary Rogelio L. Singson (Secretary Singson) requesting for reconsideration of the road widening. He cited the following: the improvement should not be at the expense of cultural heritage; bringing the highway closer to the structure would expose it to dangers and hasten its dilapidation; that the provision in DPWH Order No. 52, Series of 2003 stating that "if shall be unlawful for any person to usurp any portion of a right-of-way, to convert any part of any public highway, bridge, wharf or trail to his own private use or obstruct the same in any manner"^[8] should not apply to a property of cultural value and heritage; and that "[o]ne cannot usurp or encroach on anything that has not been there yet when it started to exist."^[9]

On even date, Bishop Beltran wrote another Letter^[10] to Chairman De Leon of the NCC A opposing the road widening.

On June 13, 2014, Mendoza wrote another Letter^[11] addressed to Bishop Beltran reiterating the request for voluntary removal/relocation of the concrete fence; and giving the latter seven days from receipt within which to con, ply. Bishop Beltran replied in a Letter^[12] dated June 20, 2014 requesting for an extension of time 10 comply, citing the ongoing talks between the DPWH and the NCCA.

On February 21, 2015, the NCC A issued the assailed CDO,^[13] citing Section 5(f) of Republic Act No. (RA) 10066.^[14] It states:

WHEREAS, Section 5(f) of Republic Act No. 10066, otherwise known as the National Cultural Heritage Act of 2009, as reiterated in Section 8.4 of its Implementing Rules and Regulations, has defined that all structure at least fifty. (50) years old are considered/presumed Important Cultural Property and is entitled to protection against exportation, modification, or demolition pursuant to Section 5 of the same law;

WHEREAS, NCCA Board Resolution Nos. 2014-443 and 2014-448 have empowered the NCCA to act on cases involving presumed Important

Cultural Property;

THEREFORE, by virtue of the power granted by law, the National Commission for Culture and the Arts, through the undersigned, directs the Department of Public Works and Highways (DPWH), through the Secretary of Public Works and Highways the Honorable Rogelio L. Singson, DPWH Undersecretary for Regional Operations the Honorable Romeo S. Momo, and/or the Regional Director of DPWH Regional Office No. 1 Engr. Melanio C. Briosos, to CEASE AND DESIST from implementing the road widening project, inclusive of demolition works, along the national highway in the Municipality of Agoo in the Province of La Union, that will potentially affect presumed Important Cultural Properties in the area, including, but not limited to, Plaza de la Virgen and Agoo Basilica without coordination and concurrence of this Commission and/or the pertinent cultural agency (namely, the National Museum or the National Historical Commission of the Philippines). Failure to comply with this mandate is a criminal offense under RA 10066.

This Order may be served and executed by any Law Enforcement Officer/s.^[15]

Russell Q. Bernal (petitioner), acting for the Joint Venture, moved for intervention before the NCCA^[16] claiming that by virtue of the contract for the project with the DPWH, the order is in fact directed to the Joint Venture. Petitioner alleged that the road widening will not affect or destroy the Basilica Church or the Plaza de la Virgen; that neither the Basilica Church nor the Plaza de la Virgen is a national heritage entitled to the protection being extended by the NCCA; that neither the Basilica Church nor the Plaza dela Virgen can be presumed as an important cultural property for being at least 50 years old; that the extent of the CDO is very extensive when only a portion of the road widening may affect the structures sought to be protected; and that under RA 8975,^[17] no court, except the Supreme Court, may issue a restraining order and delay a government infrastructure project.

Petitioner later, filed a motion^[18] before the NCCA to set the case for hearing and to resolve the pending incidents.

Without waiting for NCCA's action, petitioner filed the present petition before the Court.

In its October 5, 2015 Resolution,^[19] the Court required respondents to file their respective Comments on the petition.

In its Comment,^[20] the NCCA alleged that petitioner, as a private contractor of DPWH, has no substantive legal right to question the CDO; and that petitioner is not directly aggrieved by the CDO because it was not issued against him, but against the DPWH. The NCCA informed the Court that the case on the validity of the CDO is still pending before, it when petitioner filed its petition. The NCCA further averred that RA 8975 has no application in the case because it refers to lower courts and not to the NCCA; and that the NCCA exercises its mandates by virtue of RA 10066.

In its Comment,^[21] the DPWH alleged that on February 24, 2015, the DPWH Office