

## EN BANC

[ G.R. No. 231164, March 20, 2018 ]

**MAYOR TOMAS R. OSMEÑA, IN HIS CAPACITY AS CITY MAYOR OF CEBU, PETITIONER, V. JOEL CAPILI GARGANERA, FOR AND ON HIS BEHALF, AND IN REPRESENTATION OF THE PEOPLE OF THE CITIES OF CEBU AND TALISAY, AND THE FUTURE GENERATIONS, INCLUDING THE UNBORN, RESPONDENT.**

### DECISION

**TIJAM, J.:**

Before Us is Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court, as provided under the Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC) filed by petitioner Mayor Tomas R. Osmeña, in his capacity as City Mayor of Cebu (Mayor Osmeña), which seeks to reverse or set aside the Decision<sup>[2]</sup> dated December 15, 2016 and Resolution<sup>[3]</sup> dated March 14, 2017 of the Court of Appeals (CA) in CA G.R. SP No. 004WK, that granted the privilege of the writ of *kalikasan* and ordered Mayor Osmeña, and/or his representatives, to permanently cease and desist from dumping or disposing garbage or solid waste at the Inayawan landfill and to continue to rehabilitate the same.

#### The Antecedents

On April 6, 1993, the Department of Environment and Natural Resources (DENR) issued an Environmental Compliance Certificate (ECC) to the Solid Waste Sanitary Landfill Project at Inayawan landfill proposed by the Metro Cebu Development Project Office (MCDPO). Thereafter, the Inayawan landfill served as the garbage disposal area of Cebu City.<sup>[4]</sup>

Sometime in 2011, the Cebu City Local Government (City Government) resolved to close the Inayawan landfill per Cebu City Sangguniang Panlungsod (SP) Resolution and Executive Order of former Cebu City Mayor Michael Rama (former Mayor Rama).<sup>[5]</sup>

Subsequently, SP Resolution No. 12-0582-2011<sup>[6]</sup> dated August 24, 2011, was issued to charge the amount of P1,204,500 in the next supplemental budget to cover the cost in the preparation of closure and rehabilitation plan of Inayawan landfill.<sup>[7]</sup> Another SP Resolution with No. 12-2617 2012<sup>[8]</sup> dated March 21, 2012 was issued to proceed with the bidding process for the said preparation of closure and rehabilitation plan. As a result, the Inayawan landfill was partially closed and all wastes from Cebu City were disposed in a privately operated landfill in Consolacion.<sup>[9]</sup>

On June 15, 2015, through former Mayor Rama's directive, Inayawan landfill was formally closed.<sup>[10]</sup>

In 2016, however, under the administration of Mayor Osmeña, the City Government sought to temporarily open the Inayawan landfill, through a letter dated June 8, 2016, by then Acting Cebu City Mayor Margot Osmeña (Acting Mayor Margot) addressed to Regional Director Engr. William Cuñado (Engr. Cuñado) of the Environmental Management Bureau (EMB) of the DENR.<sup>[11]</sup> In response thereto, Engr. Cuñado invited Acting Mayor Margot to a technical conference. Thereafter, on June 27, 2016, Acting Mayor Margot sent another letter to Engr. Cuñado submitting the City Government's commitments for the establishment of a new Solid Waste Management System pursuant to the mandate under Republic Act (R.A.) No. 9003,<sup>[12]</sup> and accordingly, requested for the issuance of a Notice to Proceed for the temporary reopening of the Inayawan landfill.<sup>[13]</sup>

In his reply letter dated June 27, 2016, Engr. Cuñado informed Acting Mayor Margot that although the EMB had no authority to issue the requested notice, it interposed no objection to the proposed temporary opening of the Inayawan landfill provided that the Cebu City will faithfully comply with all its commitments and subject to regular monitoring by the EMB.<sup>[14]</sup>

Thus, in July 2016, the Inayawan landfill was officially re-opened by Acting Mayor Margot.<sup>[15]</sup>

On September 2, 2016, a Notice of Violation and Technical Conference<sup>[16]</sup> was issued by the EMB to Mayor Osmeña, regarding City Government's operation of the Inayawan Landfill and its violations of the ECC.

On September 6, 2016, the Department of Health (DOH) issued an Inspection Report<sup>[17]</sup> wherein it recommended, among others, the immediate closure of the landfill due to the lack of sanitary requirements, environmental, health and community safety issues, as conducted by the DOH Regional Sanitary Engineer, Henry D. Saludar.<sup>[18]</sup>

On September 23, 2016, Joel Capili Garganera for and on his behalf, and in representation of the People of the Cities of Cebu and Talisay and the future generations, including the unborn (respondent) filed a petition for writ of *kalikasan* with prayer for the issuance of a Temporary Environmental Protection Order (TEPO) before the CA.<sup>[19]</sup>

Respondent asserted that the continued operation of the Inayawan landfill causes serious environmental damage which threatens and violates their right to a balanced and healthful ecology.<sup>[20]</sup> Respondent also asserted that the Inayawan landfill has already outgrown its usefulness and has become ill-suited for its purpose.<sup>[21]</sup> Respondent further asserted that its reopening and continued operation violates several environmental laws and government regulations, such as: R.A. 9003; R.A. 8749 or the "Philippine Clean Air Act of 1999"; R.A. 9275 or the "Philippine Clean Water Act of 2004"; Presidential Decree (P.D.) No. 856 or the "Code on Sanitation of the Philippines"; and DENR Administrative Order (DAO) No. 2003-30 or the "Implementing Rules and Regulation (IRR) for the Philippine Environmental Impact Statement System."<sup>[22]</sup>

The CA, in a Resolution dated October 6, 2016, granted a writ of *kalikasan*, required petitioner to file a verified return and a summary hearing was set for the application

of TEPO.<sup>[23]</sup>

In petitioner's verified return, he alleged that respondent failed to comply with the condition precedent which requires 30-day notice to the public officer concerned prior to the filing of a citizens suit under R.A. 9003 and R.A. 8749. Respondent further alleged that Inayawan landfill operated as early as 1998 and it conformed to the standards and requirements then applicable.<sup>[24]</sup>

The CA, in a Decision<sup>[25]</sup> dated December 15, 2016, granted the privilege of the writ of *kalikasan* which ordered Mayor Osmeña and/or his representatives to permanently cease and desist from dumping or disposing of garbage or solid waste at the Inayawan landfill and to continue to rehabilitate the same. The dispositive portion of the CA Decision, provides:

**WHEREFORE**, in view of the foregoing premises, the privilege of the writ of *kalikasan* is hereby GRANTED. Accordingly, pursuant to Section 15, Rule 7 of the RPEC:

- 1) the respondent Mayor and/or his representatives are ordered to permanently cease and desist from dumping or disposing of garbage or solid waste at the Inayawan landfill;
- 2) the respondent Mayor and/or his representatives are ordered to continue the rehabilitation of the Inayawan landfill;
- 3) the DENR-EMB is directed to regularly monitor the City Government's strict compliance with the Court's judgment herein;
- 4) in case of non-compliance, the DENR-EMB is directed to file and/or recommend the filing of appropriate criminal, civil and administrative charges before the proper authorities against the responsible persons; and
- 5) the DENR-EMB is ordered to submit to the Court a monthly progress report on the City Government's compliance/non-compliance until such time that the rehabilitation of the Inayawan landfill is complete and sufficient according to the standards of the DENR-EMB.

**SO ORDERED.**<sup>[26]</sup>

Mayor Osmeña's motion for reconsideration was likewise denied by the CA in its Resolution<sup>[27]</sup> dated March 14, 2017, to wit:

**WHEREFORE**, in view of the foregoing premises. the Motion for Reconsideration filed by respondent Mayor Osmeña is hereby DENIED.

The Compliances with attached Compliance Monitoring Reports for the months of January and February 2017, which were filed by the public respondents through the Office of the Solicitor General (OSG), are hereby NOTED.

Pursuant to the recommendation of the public respondents in their Compliance Monitoring Reports, the Court hereby DIRECT'S respondent Mayor Osmeña to comply with the DENR-EMB's request for the submission of the local government's Safe Closure and Rehabilitation Plan (SCRIP) for the Inayawan landfill within thirty days (30) days from notice.

**SO ORDERED.**<sup>[28]</sup>

Hence, this instant petition.

### **The Issues**

For resolution of the Court are the following issues: 1) whether the 30-day prior notice requirement for citizen suits under R.A. 9003 and R.A. 8749 is needed prior to the filing of the instant petition; 2) whether the CA correctly ruled that the requirements for the grant of the privilege of the writ of *kalikasan* were sufficiently established.

### **The Ruling of the Court**

The petition is without merit.

Petitioner argues that respondent brushed aside the 30-day prior notice requirement for citizen suits under R.A. 9003<sup>[29]</sup> and RA. 8749.<sup>[30]</sup>

Petitioner's argument does not persuade.

Section 5, Rule 2 of the Rules of Procedure for Environmental Cases (RPEC), is instructive on the matter:

Section 5. Citizen suit.—Any Filipino citizen in representation of others, including minors or generations yet unborn, may file an action to enforce rights or obligations under environmental laws. Upon the filing of a citizen suit, the court shall issue an order which shall contain a brief description of the cause of action and the reliefs prayed for, requiring all interested parties to manifest their interest to intervene in the case within fifteen (15) days from notice thereof. The plaintiff may publish the order once in a newspaper of a general circulation in the Philippines or furnish all affected barangays copies of said order.

Citizen suits filed under R.A. No. 8749 and R.A. No. 9003 shall be governed by their respective provisions. (Underscoring Ours)

Section 1, Rule 7 of RPEC also provides:

**Section 1. Nature of the writ.-** The Writ is a remedy available to a natural or juridical person, entity authorized by law, people's organization, non-governmental organization, or any public interest group accredited by or registered with any government agency, on behalf of persons whose constitutional right to a balanced and healthful ecology is violated, or threatened with violation by an unlawful act or omission of a public official or employee, or private individual or entity, involving environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.

Here, the present petition for writ of *kalikasan* under the RPEC is a separate and distinct action from R.A. 9003 and R.A. 8749. A writ of *kalikasan* is an extraordinary remedy covering environmental damage of such magnitude that will prejudice the life, health or property of inhabitants in two or more cities or provinces.<sup>[31]</sup> It is designed for a narrow but special purpose: to accord a stronger protection for environmental rights, aiming, among others, to provide a speedy and effective

resolution of a case involving the violation of one's constitutional right to a healthful and balanced ecology that transcends political and territorial boundaries, and to address the potentially exponential nature of large-scale ecological threats.<sup>[32]</sup>

Moreover, Section 3, Rule 7 of RPEC allows direct resort to this Court or with any of the stations of the CA, which states:

Section 3. *Where to file.* - The petition shall be filed with the Supreme Court or with any of the stations of the Court of Appeals.

Given that the writ of *kalikasan* is an extraordinary remedy and the RPEC allows direct action to this Court and the CA where it is dictated by public welfare,<sup>[33]</sup> this Court is of the view that the prior 30 day notice requirement for citizen suits under R.A. 9003 and R.A. 8749 is inapplicable. It is ultimately within the Court's discretion whether or not to accept petitions brought directly before it.<sup>[34]</sup>

We affirm the CA when it ruled that the requirements for the grant of the privilege of the writ of *kalikasan* were sufficiently established.

Under Section 1 of Rule 7 of the RPEC, the following requisites must be present to avail of this extraordinary remedy: (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of inhabitants in two or more cities or provinces.<sup>[35]</sup>

Expectedly, the Rules do not define the exact nature or degree of environmental damage but only that it must be sufficiently grave, in terms of the territorial scope of such damage, so as to call for the grant of this extraordinary remedy. The gravity of environmental damage sufficient to grant the writ is, thus, to be decided on a case-to-case basis.<sup>[36]</sup>

The Court is convinced from the evidence on record that the respondent has sufficiently established the aforementioned requirements for the grant of the privilege of the writ of *kalikasan*. The record discloses that the City Government's resumption of the garbage dumping operations at the Inayawan landfill has raised serious environmental concerns. As aptly and extensively discussed by the appellate court in its Decision based from the EMB Compliance Evaluation Report (CER)<sup>[37]</sup> dated August 18, 2016 and the Notice of Violation and Technical Conference<sup>[38]</sup> dated September 2, 2016, issued by the EMB to Mayor Osmeña, to wit:

Moreover, based on the CER drafted by the EMB, the dumping operation at the Inayawan landfill has violated the criteria specified under DENR Administrative Order No. 34-01 specifically as to the proper leachate collection and treatment at the landfill and the regular water quality monitoring of surface and ground waters and effluent, as well as gas emissions thereat. At the same time, as admitted by Mr. Marco Silberon from the DENR-7 during the Cebu SP Executive Session<sup>[39]</sup> dated 16 August 2016, the Inayawan landfill has already been converted to a dumpsite operation despite its original design as sanitary landfill which is