

EN BANC

[G.R. No. 213948, April 25, 2017]

KNIGHTS OF RIZAL, PETITIONER, VS. DMCI HOMES, INC., DMCI PROJECT DEVELOPERS, INC., CITY OF MANILA, NATIONAL COMMISSION FOR CULTURE AND THE ARTS, NATIONAL MUSEUM, AND NATIONAL HISTORICAL COMMISSION OF THE PHILIPPINES, RESPONDENTS.

DECISION

CARPIO, J.:

*Bury me in the ground, place a stone
and a cross over it.
My name, the date of my birth, and
of my death. Nothing more.
If you later wish to surround my
grave with a fence, you may do so.
No anniversaries. I prefer Paang
Bundok.*

- Jose Rizal

The Case

Before this Court is a Petition for Injunction, with Applications for Temporary Restraining Order, Writ of Preliminary Injunction, and Others^[1] filed by the Knights of Rizal (KOR) seeking, among others, for an order to stop the construction of respondent DMCI Homes, Inc.'s condominium development project known as the Torre de Manila. In its Resolution dated 25 November 2014, the Court resolved to treat the petition as one for mandamus.^[2]

The Facts

On 1 September 2011, DMCI Project Developers, Inc. (DMCI-PDI)^[3] acquired a 7,716.60-square meter lot in the City of Manila, located near Taft Avenue, Ermita, beside the former Manila Jai-Alai Building and Adamson University.^[4] The lot was earmarked for the construction of DMCI-PDI's Torre de Manila condominium project.

On 2 April 2012, DMCI-PDI secured its Barangay Clearance to start the construction of its project. It then obtained a Zoning Permit from the City of Manila's City Planning and Development Office (CPDO) on 19 June 2012.^[5]

Then, on 5 July 2012, the City of Manila's Office of the Building Official granted DMCI-PDI a Building Permit, allowing it to build a "Forty-Nine (49) Storey w/ Basement & 2 penthouse Level Res'l./Condominium" on the property.^[6]

On 24 July 2012, the City Council of Manila issued Resolution No. 121 enjoining the Office of the Building Official to temporarily suspend the Building Permit of DMCI-PDI, citing among others, that "the Torre de Manila Condominium, based on their development plans, upon completion, will rise up high above the back of the national monument, to clearly dwarf the statue of our hero, and with such towering heights, would certainly ruin the line of sight of the Rizal Shrine from the frontal Roxas Boulevard vantage point[.]"^[7]

Building Official Melvin Q. Balagot then sought the opinion of the City of Manila's City Legal Officer on whether he is bound to comply with Resolution No. 121.^[8] In his letter dated 12 September 2012, City Legal Officer Renato G. Dela Cruz stated that there is "no legal justification for the temporary suspension of the Building Permit issued in favor of [DMCI-PDI]" since the construction "lies outside the Luneta Park" and is "simply too far to be a repulsive distraction or have an objectionable effect on the artistic and historical significance" of the Rizal Monument.^[9] He also pointed out that "there is no showing that the [area of] subject property has been officially declared as an anthropological or archeological area. Neither has it been categorically designated by the National Historical Institute as a heritage zone, a cultural property, a historical landmark or even a national treasure."

Subsequently, both the City of Manila and DMCI-PDI sought the opinion of the National Historical Commission of the Philippines (NHCP) on the matter. In the letter^[10] dated 6 November 2012 from NHCP Chairperson Dr. Maria Serena I. Diokno addressed to DMCI-PDI and the letter^[11] dated 7 November 2012 from NHCP Executive Director III Ludovico D. Badoy addressed to then Manila Mayor Alfredo S. Lim, the NHCP maintained that the Torre de Manila project site is outside the boundaries of the Rizal Park and well to the rear of the Rizal Monument, and thus, cannot possibly obstruct the frontal view of the National Monument.

On 26 November 2013, following an online petition against the Torre de Manila project that garnered about 7,800 signatures, the City Council of Manila issued Resolution No. 146, reiterating its directive in Resolution No. 121 enjoining the City of Manila's building officials to temporarily suspend DMCI-PDI's Building Permit.^[12]

In a letter to Mayor Joseph Ejercito Estrada dated 18 December 2013, DMCI-PDI President Alfredo R. Austria sought clarification on the controversy surrounding its Zoning Permit. He stated that since the CPDO granted its Zoning Permit, DMCI-PDI continued with the application for the Building Permit, which was granted, and did not deem it necessary to go through the process of appealing to the local zoning board. He then expressed DMCI-PDI's willingness to comply with the process if the City of Manila deemed it necessary.^[13]

On 23 December 2013, the Manila Zoning Board of Adjustments and Appeals (MZBAA) issued Zoning Board Resolution No. 06, Series of 2013,^[14] recommending the approval of DMCI-PDI's application for variance. The MZBAA noted that the Torre de Manila project "exceeds the prescribed maximum Percentage of Land Occupancy (PLO) and exceeds the prescribed Floor Area Ratio (FAR) as stipulated in Article V, Section 17 of City Ordinance No. 8119[.]" However, the MZBAA still recommended the approval of the variance subject to the five conditions set under the same

resolution.

After some clarification sought by DMCI-PDI, the MZBAA issued Zoning Board Resolution No. 06-A, Series of 2013,^[15] on 8 January 2014, amending condition (c) in the earlier resolution.^[16]

On 16 January 2014, the City Council of Manila issued Resolution No. 5, Series of 2014,^[17] adopting Zoning Board Resolution Nos. 06 and 06-A. The City Council resolution states that "the City Council of Manila find[s] no cogent reason to deny and/or reverse the aforesaid recommendation of the [MZBAA] and hereby ratifies] and confirm[s] all previously issued permits, licenses and approvals issued by the City [Council] of Manila for Torre de Manila[.]"

Arguments of the KOR

On 12 September 2014, the KOR, a "civic, patriotic, cultural, nonpartisan, non-sectarian and non-profit organization"^[18] created under Republic Act No. 646,^[19] filed a Petition for Injunction seeking a temporary restraining order, and later a permanent injunction, against the construction of DMCI-PDI's Torre de Manila condominium project. The KOR argues that the subject matter of the present suit is one of "transcendental importance, paramount public interest, of overarching significance to society, or with far-reaching implication" involving the desecration of the Rizal Monument.

The KOR asserts that the completed Torre de Manila structure will "[stick] out like a sore thumb, [dwarf] all surrounding buildings within a radius of two kilometer/s" and "forever ruin the sightline of the Rizal Monument in Luneta Park: Torre de Manila building would loom at the back and overshadow the entire monument, whether up close or viewed from a distance."^[20]

Further, the KOR argues that the Rizal Monument, as a National Treasure, is entitled to "full protection of the law"^[21] and the national government must abate the act or activity that endangers the nation's cultural heritage "even against the wishes of the local government hosting it."^[22]

Next, the KOR contends that the project is a nuisance *per se*^[23] because "[t]he despoliation of the sight view of the Rizal Monument is a situation that 'annoys or offends the senses' of every Filipino who honors the memory of the National Hero Jose Rizal. It is a present, continuing, worsening and aggravating status or condition. Hence, the PROJECT is a nuisance *per se*. It deserves to be abated summarily, even without need of judicial proceeding."^[24]

The KOR also claims that the Torre de Manila project violates the NHCP's *Guidelines on Monuments Honoring National Heroes, Illustrious Filipinos and Other Personages*, which state that historic monuments should assert a visual "dominance" over its surroundings,^[25] as well as the country's commitment under the *International Charter for the Conservation and Restoration of Monuments and Sites*, otherwise known as the Venice Charter.^[26]

Lastly, the KOR claims that the DMCI-PDI's construction was commenced and

continues in bad faith, and is in violation of the City of Manila's zoning ordinance.^[27]

Arguments of DMCI-PDI

In its Comment, MCI-PDI argues that the KOR's petition should be dismissed, on the following grounds:

I.

THIS HONORABLE COURT HAS NO JURISDICTION OVER THIS ACTION.

II.

KOR HAS NO LEGAL RIGHT OR INTEREST TO FILE OR PROSECUTE THIS ACTION.

III

TORRE DE MANILA IS NOT A NUISANCE PER SE.

IV.

DMCI-PDI ACTED IN GOOD FAITH IN CONSTRUCTING TORRE DE MANILA; AND

V.

KOR IS NOT ENTITLED TO A TEMPORARY RESTRAINING ORDER AND/OR A WRIT OF PRELIMINARY INJUNCTION.^[28]

First, DMCI-PDI asserts that the Court has no original jurisdiction over actions for injunction.^[29] Even assuming that the Court has concurrent jurisdiction, DMCI-PDI maintains that the petition should still have been filed with the Regional Trial Court under the doctrine of hierarchy of courts and because the petition involves questions of fact.^[30]

DMCI-PDI also contends that the KOR's petition is in actuality an opposition or appeal from the exemption granted by the City of Manila's MZBAA, a matter which is also not within the jurisdiction of the Court.^[31] DMCI-PDI claims that the proper forum should be the MZBAA, and should the KOR fail there, it should appeal the same to the Housing and Land Use Regulatory Board (HLURB).^[32]

DMCI-PDI further argues that since the Rizal Monument has been declared a National Treasure, the power to issue a cease and desist order is lodged with the "appropriate cultural agency" under Section 25 of Republic Act No. 10066 or the *National Cultural Heritage Act of 2009*.^[33] Moreover, DMCI-PDI asserts that the KOR availed of the wrong remedy since an action for injunction is not the proper remedy for abatement of a nuisance.^[34]

Second, DMCI-PDI maintains that the KOR has no standing to institute this proceeding because it is not a real party in interest in this case. The purposes of the

KOR as a public corporation do not include the preservation of the Rizal Monument as a cultural or historical heritage site.^[35] The KOR has also not shown that it suffered an actual or threatened injury as a result of the alleged illegal conduct of the City of Manila. If there is any injury to the KOR at all, the same was caused by the private conduct of a private entity and not the City of Manila.^[36]

Third, DMCI-PDI argues that the Torre de Manila is not a nuisance *per se*. DMCI-PDI reiterates that it obtained all the necessary permits, licenses, clearances, and certificates for its construction.^[37] It also refutes the KOR's claim that the Torre de Manila would dwarf all other structures around it, considering that there are other tall buildings even closer to the Rizal Monument itself, namely, the Eton Baypark Tower at the corner of Roxas Boulevard and T.M. Kalaw Street (29 storeys; 235 meters from the Rizal Monument) and Sunview Palace at the corner of M.H. Del Pilar and T.M. Kalaw Streets (42 storeys; 250 meters from the Rizal Monument).^[38]

Fourth, DMCI-PDI next argues that it did not act in bad faith when it started construction of its Torre de Manila project. Bad faith cannot be attributed to it since it was within the "lawful exercise of [its] rights."^[39] The KOR failed to present any proof that DMCI-PDI did not follow the proper procedure and zoning restrictions of the City of Manila. Aside from obtaining all the necessary permits from the appropriate government agencies,^[40] DMCI-PDI also sought clarification on its right to build on its site from the Office of the City Legal Officer of Manila, the Manila CPDO, and the NHCP.^[41] Moreover, even if the KOR proffered such proof, the Court would be in no position to declare DMCI-PDI's acts as illegal since the Court is not a trier of facts.^[42]

Finally, DMCI-PDI opposes the KOR's application for a Temporary Restraining Order (TRO) and writ of preliminary injunction. DMCI-PDI asserts that the KOR has failed to establish "a clear and unmistakable right to enjoin the construction of Torre de Manila, much less request its demolition."^[43] DMCI-PDI further argues that it "has complied with all the legal requirements for the construction of Torre de Manila x x x [and] has violated no right of KOR that must be protected. Further, KOR stands to suffer no damage because of its lack of direct pecuniary interest in this petition. To grant the KOR's application for injunctive relief would constitute an unjust taking of property without due process of law."^[44]

Arguments of the City of Manila

In its Comment, the City of Manila argues that the writ of mandamus cannot issue "considering that no property or substantive rights whatsoever in favor of [the KOR] is being affected or x x x entitled to judicial protection[.]"^[45]

The City of Manila also asserts that the "issuance and revocation of a Building Permit undoubtedly fall under the category of a discretionary act or duty performed by the proper officer in light of his meticulous appraisal and evaluation of the pertinent supporting documents of the application in accordance with the rules laid out under the National Building Code [and] Presidential Decree No. 1096,"^[46] while the remedy of mandamus is available only to compel the performance of a ministerial duty.^[47]