

THIRD DIVISION

[G.R. No. 189290, November 29, 2017]

REPUBLIC OF THE PHILIPPINES REPRESENTED BY THE ENVIRONMENTAL MANAGEMENT BUREAU, REGION VII, AND NOEL C. EMPLEO, REGIONAL DIRECTOR, PETITIONERS, VS. O.G. HOLDINGS CORPORATION, REPRESENTED BY ITS CHAIRMAN, MR. FREDERICK L. ONG, RESPONDENT.

DECISION

MARTIRES, J.:

At the urging of the Republic, for review^[1] under Rule 45 of the Rules of Court are the Decision^[2] and the Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 02530, dated 11 June 2009 and 10 August 2009, respectively, whereby the appellate court nullified and set aside the Orders dated 6 July 2006^[4] and 7 February 2007,^[5] of petitioner, the Environmental Management Bureau, Region 7 (*EMB-Region 7*), Department of Environment and Natural Resources (*DENR*), in EIA Cases Nos. VII-2006-06-019 and VII-2007-02-010.^[6] With the orders, petitioner suspended the 06-019 and VII-2007-02-010. 6 With the orders, petitioner suspended the Environmental Compliance Certificate (*ECC*) it had previously issued to the beach resort project of respondent O.G. Holdings Corporation (*O.G. Holdings*).^[7] The suspension was triggered by respondent's violation of Presidential Decree (*P.D.*) No. 1586, or the Philippine Environmental Impact Statement System, having failed to comply with a condition set forth in the certificate. With the suspension, petitioner effectively prohibited the operations and further development of the beach resort. The CA ruled that this was in grave abuse of discretion.

We required a comment^[8] and a reply.^[9] The parties complied.^[10]

The Facts

The records narrate:

Respondent's beach resort project, the Panglao Island Nature Resort, comprising 3.0709 hectares,^[11] is located at Barangay Bingag, Municipality of Dauis, Panglao Island, Bohol Province.^[12] In the resort are native-style cottages, a hotel, a clubhouse, a man-made islet with a lifeguard post, a shed, and benches. It boasts of amenities such as a business center, function rooms, sports and recreational facilities, swimming pools, a spa, wildlife sanctuaries, a marina, a full-service dive shop and novelty shops, and a beachfront bar and restaurant.^[13]

On 26 July 2002, EMB-Region 7 issued an Environmental Compliance Certificate (*ECC*) to the Panglao Island Nature Resort Corporation for the beach resort project

owned and operated by O.G. Holdings, with Frederick L. Ong as President (*Ong*).^[14]
The ECC reads:

ENVIRONMENTAL COMPLIANCE CERTIFICATE

(07 02 07-26 0226 402)

The **ENVIRONMENTAL MANAGEMENT BUREAU (EMB)** of the **Department of Environment and Natural Resources (DENR), Region VII** hereby grants this **ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC)** to **PANGLAO ISLAND NATURE RESORT CORPORATION** for its **Beach Resort project** located in Barangay Bingag, Dauis, Panglao Island, Bohol after complying with the **Environmental Impact Assessment (EIA)** requirements pursuant to P.D. 1586.

This **Certificate** is being issued subject to the following conditions:

1. That this **Certificate** is issued as one of the requirements for any permit issuances by other concerned agencies and is valid only for the beach resort project which covers a land area of three point zero seven zero nine (3.0709) hectares covered by OCT No. 75531 consisting of the following facilities/amenities;

- a. Thirteen (13) units bungalows;
- b. Seven (7) units duplex cottage;
- c. Three (3) units quadruplex cottages;
- d. Swimming pool;
- e. Lobby and Restaurant;
- f. Library and Function Room;
- g. Gazebo and Fitness Gym; and
- h. Two-hundred (200) square meter man-made island in the foreshore area.

2. That it shall be the responsibility of the proponent to secure the necessary permits/clearances and coordinate with concerned agencies to include, but not limited to the following:

- 2.1. Department of Health (DOH)-Region 7 and/or Municipal Health Office on provision of sewage treatment facilities and Sanitary Permits;
- 2.2. DENR-PENRO/CENRO on Foreshore Lease/Other Lawful Purposes Permit in case of any development in the foreshore area;
- 2.3. Municipal Engineer's Office on Drainage Clearance taking into consideration the provision of catch basins to prevent siltation/turbidity of seawater;
- 2.4. Municipal Building Official on Structural Stability and Building Permit;
- 2.5. Fisheries and Aquatic Resources Management Council Clearance, for development on-shore;
- 2.6. Municipal Government on Solid Waste Management, which shall effectively implement on solid waste management scheme, segregation and recycling of solid waste prior to

disposal in a manner that does not create nuisance or land pollution.

That it shall be the responsibility of the respective government agencies to monitor the herein stated permits/clearances;

3. That the project proponent shall be held responsible [for] damages incurred to life, property, and environment brought about by the implementation of the project. Aggrieved parties shall be justly and timely compensated. Likewise, the proponent shall set aside One Hundred Thousand Pesos (P 100,000.00) representing as Environmental Guarantee Fund (EGF) for any environmental impacts arising from the project implementation. This shall be maintained all throughout the duration of the project;

4. That buffer strip of appropriate tree species either in the form of tree parks or landscaping should be planted on any applicable areas and shall be maintained all throughout the duration of the project;

5. That overflow septic tanks from cottages should be pumped to the Centralized Sewage Treatment Facility and effluent should conform with the standards set forth in the Implementing Rules and Regulations of P.D. 984;

6. That a marine study should be conducted within the primary impact area and a report should be submitted to this Office thirty (30) days from receipt of this Certificate;

7. That information signs prohibiting coral collection should be posted on strategic locations of the project area;

8. That any expansion from the existing approved operation shall be subject to [other] EIA requirements;

9. That the project shall exit the coverage of EIS System once all the conditions have been complied with, and henceforth all regulatory activities shall be conducted by those regulatory agencies concerned, to include but not limited to those that are indicated in condition No. 2 of this Certificate. EMB, DENR-Region 7 shall be furnished a copy of the Monitoring Inspection Report of the said agencies;

10. That an on-the-spot monitoring may be conducted by DENRPENRO concerned and/or EMB-Region VII anytime in coordination with concerned groups;

11. That transfer of ownership of this project carries the same conditions as contained in this Certification for which written notification should be made by herein grantee to this Office within fifteen (15) days from such transfer; and

THIS ECC SHOULD NOT BE MISCONSTRUED AS A PERMIT, RATHER A SET OF CONDITIONALITIES WHICH SHOULD BE FOLLOWED BY

THE PROJECT PROPONENT IN ALL STAGES OF THE PROJECT IMPLEMENTATION IN ORDER TO MITIGATE POTENTIAL ADVERSE IMPACTS [ON] THE ENVIRONMENT.

Non-Compliance [with] any of the above stipulations will be sufficient cause for the suspension or cancellation of this Certificate and/or imposition of a fine in an amount not to exceed Fifty Thousand Pesos (P50,000.00) for every violation thereof, at the discretion of this Office (Section 9 of P.D. 1586).

Given this 26th day of July 2002.

Approved by:

AUGUSTUS L. MOMONGAN
Regional Executive Director

Recommending Approval:

BIENVENIDO L. LIPAYON
Regional Director

Conforme:

FREDERICK L. ONG
President and General Manager

Thereafter, O.G. Holdings proceeded to develop and operate the project, incurring an unspecified "millions of pesos" in the process.^[15]

On 3 December 2003, EMB-Region 7 monitored the project for compliance. It found three violations of the ECC: (a) non-compliance with its Conditions Nos. 2.2, 3, and 6, or the requirements that the project obtain a foreshore lease, (b) that it establish an Environmental Guarantee Fund, and (c) that it submit a marine study on the project's primary impact area.^[16] Consequently, the bureau issued a Notice of Violation, dated 15 March 2004.^[17]

The following month, on 16 April 2004, EMB-Region 7 again conducted a compliance monitoring, and found that ECC again failed to comply with Conditions Nos. 2.2 and 6.^[18] On 13 May 2004, it issued a Notice of Violation^[19] to respondent Ong, President and General Manager of Panglao Island Nature Resort Corporation^[20] and Chairperson of O.G. Holdings,^[21] with an invitation to a technical conference on 16 June 2004 at the bureau's office in Mandaue City.^[22] EMB-Region 7 Regional Director Bienvenido L. Lipayon signed the notice.^[23]

At the conference, O.G. Holdings disclosed the difficulties it was having in securing a foreshore lease for the beach resort project. Particularly, it stated that the Municipality of Dauis could not give its favorable endorsement for the lease, as an existing ordinance, Municipal Ordinance No. 03-1991,^[24] prohibited any development on the municipal shorelines. Nonetheless, it made a commitment that it would file "appropriate documents"^[25] on the foreshore lease and marine study.

On 1 March 2005, O.G. Holding,s submitted a marine study, finally complying with ECC Condition No. 6.^[26]

The following day, 2 March 2005, EMB-Region 7 held yet another monitoring and noted the continuing violation of ECC Condition No. 2.2, viz, the securing of a foreshore lease.^[27] At this point, it bears mentioning that the bureau had also received a complaint from a local fisherfolk organization, the Bingag Little Fishermen's Organization, that O.G. Holdings was cordoning the shoreline at the project site, affecting the right of way of the fisherfolk.^[28]

On 28 April 2005, EMB-Region 7 again sent O.G. Holdings a Notice of Violation with respect to ECC Condition No. 2.2.^[29] O.G. Holdings replied, in a letter sent on 10 November 2005, that compliance with the condition was legally impossible. It blamed the local government unit for allegedly failing to act^[30] on its request that the Panglao Island Nature Resort Corporation be given a favorable endorsement for a foreshore lease. It informed EMB-Region 7 that it had filed, instead, an application with the Philippine Reclamation Authority (*PRA*) for the special registration of a man-made island located within the project. O.G. Holdings prayed that the bureau consider *the application* with the PRA as substantial compliance with ECC Condition No. 2.2. In support of this prayer, it submitted a letter,^[31] dated 25 May 2005, issued by PRA General Manager and Chief Executive Officer Teodorico C. Taguinod acknowledging receipt of said application for the registration of O.G. Holdings' man-made island, and advising that PRA's requirements must be met.^[32]

On 4 July 2006, EMB-Region 7's Environmental Impact Assessment (*EIA*) Division recommended the suspension of the ECC issued to the Panglao Island Nature Resort Corporation. Incidentally, on the following day, the Department of Tourism issued a Class "AA" accreditation to the beach resort.^[33]

The Orders of the Environmental Management Bureau

Acting on EIA Division's recommendation, EMB-Region 7 suspended the subject ECC in an order,^[34] dated 6 July 2006, and signed by petitioner Alan C. Arranguez (*Arranguez*), Officer-in-Charge, Office of the Regional Director, EMB-Region 7, which reads:

WHEREFORE, viewed from the light of the foregoing and pursuant to Section 6.0 (b) of DAO 96-37, the **Environmental Compliance Certificate (ECC 07 01 04-03 0054 402)** issued to Panglao Island Nature Resort is **SUSPENDED** for failure of the proponent to submit foreshore lease agreement and/or permit from the Philippine Reclamation Authority for the foreshore area of the project.

The proponent is directed to **CEASE AND DESIST** from undertaking project expansion and other developments within the project area.

The Chief of the Environmental Impact Assessment Division or his duly authorized representative is directed to implement this Order within seventy-two (72) hours and to submit report within forty-eight (48)