

EN BANC

[G.R. No. 223076, September 13, 2016]

PILAR CAÑEDA BRAGA, PETER TIU LAVINA, ANTONIO H. VERGARA, BENJIE T. BADAL, DIOSDADO ANGELO A. MAHIPUS, AND SAMAL CITY RESORT OWNERS ASSOCIATION, INC. (SCROA), PETITIONERS, VS. HON. JOSEPH EMILIO A. ABAYA, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), PRE-QUALIFICATION, BIDS AND AWARDS COMMITTEE (PBAC) AND PHILIPPINE PORTS AUTHORITY (PPA), RESPONDENTS.

DECISION

BRION, J.:

This is an *Urgent Petition for a Writ of Continuing Mandamus and/or Writ of Kalikasan* with a prayer for the issuance of a temporary environmental protection order (*TEPO*). The petition is directed against the Department of Transportation and Communications (*DOTC*) and the Philippine Ports Authority's (*PPA*) modernization project: the Davao Sasa Wharf (*the project*), a 30-year concession to develop, operate, and manage the port under the Public-Private Partnership (*PPP*) scheme.

The project is allegedly being carried out without the necessary Environmental Compliance Certificate (*ECC*) or Environmental Impact Statements required under Presidential Decree No. (*P.D.*) 1586^[1] and P.D. 1151.^[2] The project also allegedly failed to conduct local consultation and to secure prior *sanggunian* approval as required by the Local Government Code.^[3]

The Facts

The Port of Davao is a seaport located in Mindanao. It is composed of several ports, all within the gulf of Davao, but its base port is the Sasa Wharf located at Barangay Sasa, Davao City.

In 2011, the Sasa Wharf was pegged for privatization under the PPP scheme.

In 2012, the PPA commissioned a feasibility study (PPA study) on the current condition of the Sasa Wharf and its potential new targets in volume increase expansion. The study, which was completed in 2012, was conducted by Science & Vision For Technology, Inc.

The PPA study estimated that the modernization project would cost an estimated 3.5 Billion pesos for the purchase of new equipment and the installation of new facilities.

^[4]

However, the **DOTC** commissioned another firm, Hamburg port Consultants, to conduct a second feasibility study (*DOTC study*) which was concluded in 2013. The DOTC study has a projected cost of 18 billion pesos and requires the expansion of Sasa Wharf by 27.9 hectares.^[5]

The DOTC study served as one of the primary considerations for current Sasa Wharf expansion project.

On December 21, 2014, the Regional Development Council for Region XI (*the Council*) endorsed the project through **Resolution No. 118** subject to the following conditions that must be met before its implementation:^[6]

1. The DOTC shall immediately secure the acquisition of 6.4 hectares of right of way, per recommendation of the National Economic and Development Authority - Investment Coordination Committee (*NEDA-ICC*);
2. The DOTC shall ensure that appropriate compensation is paid to the owners of the properties to be acquired as additional right of way;
3. The DOTC shall ensure the proper relocation/resettlement of the informal settlers affected by the project; and
4. The DOTC shall ensure the project will also benefit the port users and the people of Davao by providing better, more affordable service, and generating sustainable employment opportunities.^[7]

On April 10, 2015, the DOTC published an invitation to pre-qualify and bid for the Project.^[8]

On March 15, 2016, the petitioners - all stakeholders from Davao City and Samal, Davao del Norte - filed this *Urgent Petition for a Writ of Continuing Mandamus and/or Writ of Kalikasan*.

The Petition

The petitioners allege: (1) that the DOTC issued the notice of public bidding despite noncompliance with Resolution No. 118; (2) that the DOTC did not conduct prior consultation and public hearings nor secure the approval of the *sanggunian* concerned as required under Sections 26 and 27 of the LGC; (3) that the Davao City *sanggunian* had passed a resolution objecting to the project for its noncompliance with the LGC; and (4) that the DOTC has not yet obtained an Environmental Compliance Certificate (ECC) as required under P.D. 1586.

They argue that the DOTC's implementation of the project - one that as a significant impact on the environment - without preparing an Environmental Impact Statement, securing an ECC, or consulting the affected stakeholders, violates their constitutional right to a healthy and balanced ecology.

The petitioners seek to restrain the implementation of the Project - including its bidding and award - until the respondents secure an ECC and comply with the LGC.

The Counter-arguments

The respondents, through the Office of the Solicitor General (*OSG*), invoke the prematurity of the petition. They argue that the Project is still in the bidding process; thus, there is still no proponent to implement it.

The proponent — *not the respondents* — has the duty to initiate the Environmental Impact Assessment (*EIA*) process and to apply for the issuance of the ECC.^[9] Until the bidding process is concluded, the EIA process cannot be undertaken and it would be premature to impute noncompliance with the Environmental Impact Statement System.^[10]

Moreover, consultation with the stakeholders and the local government is premature and speculative at this point because the proponent has not yet identified the actual details of the project's implementation. Again, compliance with the consultation requirements of the LGC remains premature pending the award of the contract.

They further argue that the allegations do not warrant the issuance of a writ of *kalikasan* because the petitioners failed to prove the threat of environmental damage of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces.^[11]

Our Ruling

The petition is premature.

To better understand our judgment, we must first delve into the relevant laws and their progression over time.

On June 6, 1977, President Ferdinand Marcos enacted P.D. 1151, the Philippine Environmental Policy. It required all agencies and instrumentalities of the national government, including government-owned or -controlled corporations (GOCCs), as well as private corporations, firms, and entities to prepare a detailed **Environmental Impact Statement (EIS)** for every project or undertaking that significantly affects the quality of the environment.^[12]

A year later on June 11, 1978, President Marcos issued P.D. 1586 which expounded on P.D. 1151 to institutionalized a more comprehensive EIS System.^[13] It introduced the ECC, a certificate issued by the President his representative) to environmentally critical projects that have sufficient safeguards to protect and preserve the environment. It also penalized th who violate the Environmental Impact System, its implementing rules, or the conditions of their ECC.^[14]

P.D. 1586 tasked the National Environmental Protection Council (*the Council*) to issue its implementing rules and regulations (*IRR*). Environmental Management Bureau (*EMB*), a bureau under the Department of Environment and Natural Resources (*DENR*), absorbed these powers later on after the council was abolished.^[15]

In 1991, Congress enacted the LGC which promoted public participation by requiring national government agencies to consult stakeholders before undertaking programs with significant ecological impact.

In 1996, President Fidel V. Ramos mandated the continuous Strengthening of DENR's Environmental Impact Assessment Capability.^[16] He also required project proponents to conduct the environmental impact study and the feasibility study of proposed projects simultaneously in order to maximize the use of resources.^[17]

In an effort to further rationalize the EIS System and streamline the CC application process, President Gloria Macapagal-Arroyo directed the DENR Secretary to issue new guidelines in 2002.^[18]

Consequently, the DENR issued Administrative Order (DAO) No. 2003-30, the current IRR for the EIS System.

Impact Assessment and the EIS System

Environmental Impact Assessment (EIA) is the process of evaluating and predicting the likely impacts - including cumulative impacts - of an undertaking on the environment.^[19] Its goal is to prevent or mitigate potential harm to the environment and to protect the welfare of the affected community. To this end, the process requires proponents to truthfully and responsibly disclose all relevant information on the project through the EIS. This facilitates meaningful and informed public participation that ensures the project's social acceptability to the community.

The following are the key operating principles of the EIS System:

- a. The EIS System is concerned primarily with assessing the direct and indirect impacts of a project on the biophysical and human environment and ensuring that these impacts are addressed by appropriate environmental protection and enhancement measures.
- b. The EIS System aids proponents in incorporating environmental considerations in planning their projects as well as in determining the environment's impact on their project.
- c. **Project proponents are responsible for determining and disclosing all relevant information necessary for a methodical assessment of the environmental impacts of their projects;**
- d. The review of the EIS by EMB shall be guided by three general criteria: (1) that environmental considerations are integrated into the overall project planning, (2) that the assessment is technically sound and proposed environmental mitigation measures are effective, and (3) that, social acceptability is based on informed public participation;
- e. **Effective regulatory review of the EIS depends largely on timely, full, and accurate disclosure of relevant information by project proponents and other stakeholders in the EIA process;**

- f. The social acceptability of a project is a result of meaningful public participation, which shall be assessed as part of the Environmental Compliance Certificate (ECC) application, based on concerns related to the project's environmental impacts;
- g. The timelines prescribed by this Order, within which an Environmental Compliance Certificate must be issued, or denied, apply only to processes and actions within the Environmental Management Bureau's (EMB) control and do not include actions or activities that are the responsibility of the proponent.^[20]

Projects or undertakings that pose a potential significant impact to the environment are required to undergo impact assessment in order to secure ECCs.^[21] The proponent initiates the application process by filing a comprehensive EIS with the EMB. The EIS should at least have the following:

- a. EIS Executive Summary;
- b. **Project Description;**
- c. Matrix of the scoping agreement identifying critical issues and concerns, as validated by EMB;
- d. Baseline environmental conditions focusing on the sectors (and resources) most significantly affected by the proposed action;
- e. Impact assessment focused on significant environmental impacts (in relation to project construction/commissioning, operation and decommissioning), taking into account cumulative impacts;
- f. Environmental Risk Assessment if determined by EMB as necessary during scoping;
- g. **Environmental Management Program/Plan;**
- h. **Supporting documents;** including technical/socio-economic data used/generated; certificate of zoning viability and municipal land use plan; and proof of consultation with stakeholders;
- i. Proposals for Environmental Monitoring and Guarantee Funds including justification of amount, when required;
- j. Accountability statement of EIA consultants and the project proponent; and
- k. Other clearances and documents that may be determined and agreed upon during scoping.^[22]

The EIS contains a *detailed* project description of the nature, configuration, the raw materials/natural resources to be used, production system, waste generation and control, timelines, and all other related activities of the proposed project.^[23] It also includes an Environmental Management Plan (*EMP*) detailing the proponent's