

FIRST DIVISION

[G.R. No. 180882, February 27, 2013]

THE BAGUIO REGREENING MOVEMENT, INC., REPRESENTED BY ATTY. ERDOLFO V. BALAJADIA; CITY ENVIRONMENT AND PARKS MANAGEMENT OFFICE, REPRESENTED BY ITS OFFICER-IN-CHARGE, CORDELIA C. LACSAMANA; AND THE BUSOL FOREST RESERVATION TASK FORCE, REPRESENTED BY ITS TEAM LEADER, VICTOR DICTAG, PETITIONERS, VS. ATTY. BRAIN MASWENG, IN HIS CAPACITY AS REGIONAL HEARING OFFICER, NCIP-CAR; ELIZABETH MAT-AN, FOR HERSELF AND AS REPRESENTATIVE OF THE HEIRS OF RAFAEL; JUDITH MARANES, FOR HERSELF AND AS REPRESENTATIVE OF THE HEIRS OF MOLINTAS; HELEN LUBOS, FOR HERSELF AND AS REPRESENTATIVE OF THE HEIRS OF KALOMIS; MAGDALENA GUMANGAN QUE, FOR HERSELF AND AS REPRESENTATIVE OF THE HEIRS OF GUMANGAN; SPOUSES ALEXANDER AMPAGUEY AND LUCIA AMPAGUEY; AND SPOUSES CARMEN PANAYO AND MELANIO PANAYO, RESPONDENTS.

D E C I S I O N

LEONARDO-DE CASTRO, J.:

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rule on Civil Procedure assailing the Decision^[1] of the Court of Appeals dated April 30, 2007 in CA-G.R. SP No. 78570 insofar as it affirmed the issuances of National Commission on Indigenous Peoples (NCIP) Hearing Officer Brain Masweng, and the Resolution of the same court dated December 11, 2007 denying petitioners' Motion for Partial Reconsideration.

Herein private respondents Elizabeth Mat-an, Judith Maranes, Helen Lubos, Magdalena Gumangan Que, spouses Alexander and Lucia Ampaguey, and spouses Melanio and Carmen Panayo, claiming that their parents inherited from their ancestors several parcels of land in what is now known as the Busol Watershed Reservation, filed before the NCIP a Petition for Injunction, with an application for a Temporary Restraining Order (TRO), and thereafter a Writ of Preliminary Injunction seeking to enjoin the Baguio District Engineer's Office, the Office of the City Architect and Parks Superintendent, and petitioners The Baguio Regreening Movement, Inc. and the Busol Task Force from fencing the Busol Watershed Reservation.

In their Petition before the NCIP, private respondents claim that they are members of the Ibaloi and Kankanaey tribes of Baguio City. Their ancestors' ownership of the properties now known as the Busol Watershed Reservation was allegedly expressly recognized in Proclamation No. 15 issued by Governor General Leonard Wood. As owners of said properties, their ancestors paid the realty taxes thereon. The fencing

project of petitioners would allegedly impede their access to and from their residences, farmlands and water sources, and dispossess them of their yard where tribal rituals and ceremonies are usually held.

On October 21, 2002, NCIP Regional Hearing Officer Brain S. Masweng issued a TRO, the dispositive portion of which reads:

WHEREFORE, finding the petition in order and that grave injustice may result should the acts complained of be not immediately restrained, a Temporary Restraining Order is hereby issued pursuant to Section 69 (d) of R.A. 8371, ordering the respondents namely, the Baguio District Engineer's Office, represented by Engineer Nestor M. Nicolas, the Project Contractor, Mr. Pel-ey, the Baguio Regreening Movement Inc., represented by Atty. Erdolfo V. Balajadia, the Busol Task Force, represented by its Team Leader, Moises G. Anipew, the Baguio City Architect and Parks Superintendent Office, represented by Arch. Ignacio Estipona, and all persons acting for and their behalf (sic) of the respondents[,] their agents and/or persons whomever acting for and their behalf (sic), to refrain, stop, cease and desist from fencing and/or constructing fences around and between the areas and premises of petitioners, ancestral land claims, specifically identified in Proclamation No. 15 as Lot "A" with an area of 143,190 square meters, included within the boundary lines, Lot "B" 77,855 square meters, included within the boundary lines, Lot "C" 121,115 square meters, included within the boundary lines, Lot "D" 33,839 square meters, included within the boundary lines, Lot "E" 87,903 square meters, included within the boundary lines, Lot "F" 39,487 square meters, included within the boundary lines, Lot "G" 11,620 square meters, included within the boundary lines, Lot "H" 17,453 square meters, included within the boundary lines, Lot "J" 40,000 square meters, included within the boundary lines, all described and embraced under Proclamation No. 15, the land embraced and described under the approved plan No. 12064 of the then Director of Lands, containing an area of 186, square meters surveyed for Gumangan, the land covered by LRC PSD 52910, containing an area of 77,849 square meters as surveyed for Emily Kalomis, that land covered by survey plan 11935 Amd, containing an area of 263153 square meters as surveyed for Molintas, and that land covered by AP-7489, containing an area of 155084 as surveyed for the heirs of Rafael.

This Restraining Order shall be effective for a period of twenty (20) days from receipt hereof.

Meantime, the respondents are further ordered to show cause on November 5, 2002 (Tuesday) at 2:00 o'clock in the afternoon, why petitioners' prayer for the issuance of a writ of preliminary injunction should not be granted.^[2]

On November 6, 2002, Atty. Masweng denied petitioners' motion to dissolve the TRO, explaining that a TRO may be issued *motu proprio* where the matter is of extreme urgency and the applicant will suffer grave injustice and irreparable injury.

He further stated that petitioners failed to comply with the procedure laid down in Section 6, Rule 58 of the Rules of Court.

On November 12, 2002, Atty. Masweng issued an Order, the dispositive portion of which states:

WHEREFORE, a writ of preliminary injunction is hereby issued against the respondents, their agents, or persons acting for and in their behalves (sic), ordering them to refrain, cease and desist from implementing their fencing project during the pendency (sic) of the above-entitled case in any portion of petitioners' ancestral land claims within the Busol Watershed Reservation. The lands being identified under Proclamation No. 15 as lot[s] 'A', 'B', 'C', 'D', 'E', 'F', 'G', 'H', and 'J', including the lands covered by Petitioners' approved survey plans as follows: that land identified and plotted under Survey Plan No. B.L. FILE No. II-11836, September, 1916 surveyed for Gumangan; that land covered by PSD-52910, May, 1921, surveyed for Emily Kalomis; that land covered by survey plan II-11935 Amd, 1916, surveyed for Molintas; and that land covered by Survey Plan No. AP 7489, March 1916, surveyed for the heirs of Rafael.

The writ of preliminary injunction shall be effective and shall be enforced only upon petitioners' compliance with the required injunctive bond of Twenty Thousand Pesos (P20,000.00) each in compliance with Section 3, R.A. 8975.^[3]

Atty. Masweng ruled that the NCIP has jurisdiction over all claims and disputes involving rights of Indigenous Cultural Communities (ICCs) and Indigenous Peoples (IPs) and, in the exercise of its jurisdiction, may issue injunctive writs. According to Atty. Masweng, the allegations in the verified petition show that private respondents invoked the provisions of Republic Act No. 8371, otherwise known as the Indigenous Peoples Rights Act of 1997 (IPRA), when they sought to enjoin petitioners from fencing their ancestral lands within the Busol Watershed Reservation. Petitioners' fencing project violated Section 58 of the IPRA, which requires the prior written consent of the affected ICCs/IPs. The NCIP therefore has authority to hear the petition filed by private respondents and to issue the injunctive writ. As regards petitioners' contention that the issuance of the TRO violated Presidential Decree No. 1818, Atty. Masweng applied the Decision of this Court in *Malaga v. Penachos, Jr.*,^[4] and held that:

[R]espondent's project of fencing the Busol Watershed is not in the exercise of administrative discretion involving a very technical matter. This is so since the implementation of the fencing project would traverse along lands occupied by people who claim that they have a legal right over their lands. The fence would actually cut across, divide, or segregate lands occupied by people. The effect of it would fence in and fence out property claims. In this case, petitioners invoke their constitutional rights to be protected against deprivation of property

without due process of law and of taking private property without just compensation. Such situations involve pure question of law.^[5]

As regards the invocation of *res judicata* by petitioners, Atty. Masweng held that they failed to present copies of the Decisions supposedly rendered by the Regional Trial Court and the Supreme Court.

On November 29, 2002, petitioners filed a Motion for Reconsideration of the above Order. On June 20, 2003, Atty. Masweng denied said Motion on the ground that the same was filed out of time.

Petitioners filed before the Court of Appeals a Petition for *Certiorari*, alleging grave abuse of discretion on the part of Atty. Masweng in issuing the TRO and the writ of preliminary injunction.

On April 30, 2007, the Court of Appeals rendered its Decision dismissing petitioners' Petition for *Certiorari*. The dispositive portion of the Decision is as follows:

WHEREFORE, premises considered, the instant petition is **DISMISSED** and the assailed orders of public respondent **AFFIRMED**. Nevertheless, private respondents are hereby enjoined from (i) introducing constructions at the Busol Watershed and Forest Reservation and (ii) engaging in activities that degrade the resources therein until viable measures or programs for the maintenance, preservation and development of said reservation are adopted pursuant to Sec. 58 of Rep. Act No. 8371.^[6]

The Court of Appeals ruled that since the petition before the NCIP involves the protection of private respondents' rights to their ancestral domains in accordance with Section 7(b), (c) and (g)^[7] of the IPRA, the NCIP clearly has jurisdiction over the dispute pursuant to Section 66. The Court of Appeals also upheld the conclusion of Atty. Masweng that the NCIP can issue injunctive writs as a principal relief against acts adversely affecting or infringing on the rights of ICCs or IPs, because "(t)o rule otherwise would render NCIP inutile in preventing acts committed in violation of the IPRA."^[8]

As regards petitioners' allegations that government reservations such as the subject Busol Watershed cannot be the subject of ancestral domain claims, the Court of Appeals pointed out that Section 58^[9] of the IPRA in fact mandates the full participation of ICCs/IPs in the maintenance, management, and development of ancestral domains or portions thereof that are necessary for critical watersheds. The IPRA, thus, gives the ICCs/IPs responsibility to maintain, develop, protect, and conserve such areas with the full and effective assistance of government agencies.^[10]

Despite ruling in favor of private respondents, the Court of Appeals nevertheless found merit in petitioners' own application for injunction and observed that certain activities by private respondents without regard for environmental considerations could result in irreparable damage to the watershed and the ecosystem. Thus, the

Court of Appeals enjoined private respondents from introducing constructions at the Busol Watershed and from engaging in activities that degrade its resources, until viable measures or programs for the maintenance, preservation and development of said reservation are adopted pursuant to the aforementioned Section 58 of the IPRA.

Hence, the present Petition for Review wherein petitioners assert the following grounds:

1. THE COURT OF APPEALS GRAVELY AND PATENTLY ERRED IN SUSTAINING THE NCIP'S ISSUANCE OF A TEMPORARY RESTRAINING ORDER AND WRIT OF PRELIMINARY INJUNCTION DESPITE CLEAR AND PATENT VIOLATION OF P.D. 1818, SUPREME COURT CIRCULAR NO. 68-94 AND SUPREME COURT ADMINISTRATIVE CIRCULAR NO. 11-2000;
2. THE COURT OF APPEALS GRAVELY AND PATENTLY ERRED IN AFFIRMING THE ACT OF THE NCIP IN ISSUING A 20-DAYS TEMPORARY RESTRAINING ORDER EX PARTE SANS THE MANDATORY NOTICE AND HEARING FOR THE ISSUANCE THEREOF;
3. THE COURT OF APPEALS GRAVELY AND PATENTLY ERRED IN SUSTAINING THE NCIP'S ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION DESPITE ABSOLUTE ABSENCE OF CLEAR, UNMISTAKABLE AND POSITIVE LEGAL RIGHTS ON THE PART OF THE APPLICANTS;
4. THE COURT OF APPEALS GRAVELY AND PATENTLY ERRED IN HOLDING THAT THE NCIP HEARING OFFICER HAS JURISDICTION OVER A CASE OF INJUNCTION INVOLVING A GOVERNMENT INFRASTRUCTURE PROJECT;
5. THE COURT OF APPEALS PATENTLY AND GRAVELY ERRED IN BRUSHING ASIDE SECTION 78, A SPECIAL PROVISION OF REPUBLIC ACT 8371 WHICH EXCLUDES THE CITY OF BAGUIO FROM THE COVERAGE OF ANCESTRAL LAND CLAIMS APPLICATIONS;
6. THE COURT OF APPEALS GRAVELY AND PATENTLY ERRED IN UPHOLDING RULE XIII OF THE IMPLEMENTING RULES OF REPUBLIC ACT 8371, EVEN IF THE PROVISIONS OF SAID RULE XIII CLEARLY OVERSTEPPED AND EXCEEDED SECTION 78 OF R.A. 8371.^[11]

TRO and Preliminary Injunction against Government Infrastructure Projects

The governing law as regards the prohibition to issue restraining orders and injunctions against government infrastructure projects is Republic Act No. 8975,^[12] which modified Presidential Decree No. 1818, the law cited by the parties, upon its effectivity on November 26, 2000.^[13] Section 9 of Republic Act No. 8975 provides:

Section 9. *Repealing Clause.* — All laws, decrees, including Presidential Decree Nos. 605, 1818 and Republic Act No. 7160, as amended, orders,