

EN BANC

[G.R. Nos. 171947-48, December 18, 2008]

**METROPOLITAN MANILA DEVELOPMENT AUTHORITY,
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,
DEPARTMENT OF EDUCATION, CULTURE AND SPORTS,^[1]
DEPARTMENT OF HEALTH, DEPARTMENT OF AGRICULTURE,
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, DEPARTMENT
OF BUDGET AND MANAGEMENT, PHILIPPINE COAST GUARD,
PHILIPPINE NATIONAL POLICE MARITIME GROUP, AND
DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT,
PETITIONERS, VS. CONCERNED RESIDENTS OF MANILA BAY,
REPRESENTED AND JOINED BY DIVINA V. ILAS, SABINIANO
ALBARRACIN, MANUEL SANTOS, JR., DINAH DELA PEÑA, PAUL
DENNIS QUINTERO, MA. VICTORIA LLENOS, DONNA CALOZA,
FATIMA QUITAIN, VENICE SEGARRA, FRITZIE TANGKIA, SARAH
JOELLE LINTAG, HANNIBAL AUGUSTUS BOBIS, FELIMON
SANTIAGUEL, AND JAIME AGUSTIN R. OPOSA, RESPONDENTS.**

DECISION

VELASCO JR., J.:

The need to address environmental pollution, as a cause of climate change, has of late gained the attention of the international community. Media have finally trained their sights on the ill effects of pollution, the destruction of forests and other critical habitats, oil spills, and the unabated improper disposal of garbage. And rightly so, for the magnitude of environmental destruction is now on a scale few ever foresaw and the wound no longer simply heals by itself.^[2] But amidst hard evidence and clear signs of a climate crisis that need bold action, the voice of cynicism, naysayers, and procrastinators can still be heard.

This case turns on government agencies and their officers who, by the nature of their respective offices or by direct statutory command, are tasked to protect and preserve, at the first instance, our internal waters, rivers, shores, and seas polluted by human activities. To most of these agencies and their official complement, the pollution menace does not seem to carry the high national priority it deserves, if their track records are to be the norm. Their cavalier attitude towards solving, if not mitigating, the environmental pollution problem, is a sad commentary on bureaucratic efficiency and commitment.

At the core of the case is the Manila Bay, a place with a proud historic past, once brimming with marine life and, for so many decades in the past, a spot for different contact recreation activities, but now a dirty and slowly dying expanse mainly because of the abject official indifference of people and institutions that could have otherwise made a difference.

This case started when, on January 29, 1999, respondents Concerned Residents of Manila Bay filed a complaint before the Regional Trial Court (RTC) in Imus, Cavite against several government agencies, among them the petitioners, for the cleanup, rehabilitation, and protection of the Manila Bay. Ruffled to Branch 20 and docketed as Civil Case No. 1851-99 of the RTC, the complaint alleged that the water quality of the Manila Bay had fallen way below the allowable standards set by law, specifically Presidential Decree No. (PD) 1152 or the Philippine Environment Code. This environmental aberration, the complaint stated, stemmed from:

x x x [The] reckless, wholesale, accumulated and ongoing acts of omission or commission [of the defendants] resulting in the clear and present danger to public health and in the depletion and contamination of the marine life of Manila Bay, [for which reason] ALL defendants must be held jointly and/or solidarily liable and be collectively ordered to clean up Manila Bay and to restore its water quality to class B waters fit for swimming, skin-diving, and other forms of contact recreation.^[3]

In their individual causes of action, respondents alleged that the continued neglect of petitioners in abating the pollution of the Manila Bay constitutes a violation of, among others:

- (1) Respondents' constitutional right to life, health, and a balanced ecology;
- (2) The Environment Code (PD 1152);
- (3) The Pollution Control Law (PD 984);
- (4) The Water Code (PD 1067);
- (5) The Sanitation Code (PD 856);
- (6) The Illegal Disposal of Wastes Decree (PD 825);
- (7) The Marine Pollution Law (PD 979);
- (8) Executive Order No. 192;
- (9) The Toxic and Hazardous Wastes Law (Republic Act No. 6969);
- (10) Civil Code provisions on nuisance and human relations;
- (11) The Trust Doctrine and the Principle of Guardianship; and
- (12) International Law

Inter alia, respondents, as plaintiffs *a quo*, prayed that petitioners be ordered to clean the Manila Bay and submit to the RTC a concerted concrete plan of action for the purpose.

The trial of the case started off with a hearing at the Manila Yacht Club followed by an ocular inspection of the Manila Bay. Renato T. Cruz, the Chief of the Water Quality Management Section, Environmental Management Bureau, Department of Environment and Natural Resources (DENR), testifying for petitioners, stated that water samples collected from different beaches around the Manila Bay showed that the amount of fecal coliform content ranged from 50,000 to 80,000 most probable number (MPN)/ml when what DENR Administrative Order No. 34-90 prescribed as a safe level for bathing and other forms of contact recreational activities, or the "SB" level, is one not exceeding 200 MPN/100 ml.^[4]

Rebecca de Vera, for Metropolitan Waterworks and Sewerage System (MWSS) and in behalf of other petitioners, testified about the MWSS' efforts to reduce pollution along the Manila Bay through the Manila Second Sewerage Project. For its part, the Philippine Ports Authority (PPA) presented, as part of its evidence, its memorandum

circulars on the study being conducted on ship-generated waste treatment and disposal, and its *Linis Dagat* (Clean the Ocean) project for the cleaning of wastes accumulated or washed to shore.

The RTC Ordered Petitioners to Clean Up and Rehabilitate Manila Bay

On September 13, 2002, the RTC rendered a Decision^[5] in favor of respondents. The dispositive portion reads:

WHEREFORE, finding merit in the complaint, judgment is hereby rendered ordering the abovenamed defendant-government agencies, jointly and solidarily, to clean up and rehabilitate Manila Bay and restore its waters to SB classification to make it fit for swimming, skin-diving and other forms of contact recreation. To attain this, defendant-agencies, with defendant DENR as the lead agency, are directed, within six (6) months from receipt hereof, to act and perform their respective duties by devising a consolidated, coordinated and concerted scheme of action for the rehabilitation and restoration of the bay.

In particular:

Defendant MWSS is directed to install, operate and maintain adequate [sewerage] treatment facilities in strategic places under its jurisdiction and increase their capacities.

Defendant LWUA, to see to it that the water districts under its wings, provide, construct and operate sewage facilities for the proper disposal of waste.

Defendant DENR, which is the lead agency in cleaning up Manila Bay, to install, operate and maintain waste facilities to rid the bay of toxic and hazardous substances.

Defendant PPA, to prevent and also to treat the discharge not only of ship-generated wastes but also of other solid and liquid wastes from docking vessels that contribute to the pollution of the bay.

Defendant MMDA, to establish, operate and maintain an adequate and appropriate sanitary landfill and/or adequate solid waste and liquid disposal as well as other alternative garbage disposal system such as re-use or recycling of wastes.

Defendant DA, through the Bureau of Fisheries and Aquatic Resources, to revitalize the marine life in Manila Bay and restock its waters with indigenous fish and other aquatic animals.

Defendant DBM, to provide and set aside an adequate budget solely for the purpose of cleaning up and rehabilitation of Manila Bay.

Defendant DPWH, to remove and demolish structures and other nuisances that obstruct the free flow of waters to the bay. These nuisances discharge solid and liquid wastes which eventually end up in

Manila Bay. As the construction and engineering arm of the government, DPWH is ordered to actively participate in removing debris, such as carcass of sunken vessels, and other non-biodegradable garbage in the bay.

Defendant DOH, to closely supervise and monitor the operations of septic and sludge companies and require them to have proper facilities for the treatment and disposal of fecal sludge and sewage coming from septic tanks.

Defendant DECS, to inculcate in the minds and hearts of the people through education the importance of preserving and protecting the environment.

Defendant Philippine Coast Guard and the PNP Maritime Group, to protect at all costs the Manila Bay from all forms of illegal fishing.

No pronouncement as to damages and costs.

SO ORDERED.

The MWSS, Local Water Utilities Administration (LWUA), and PPA filed before the Court of Appeals (CA) individual Notices of Appeal which were eventually consolidated and docketed as CA-G.R. CV No. 76528.

On the other hand, the DENR, Department of Public Works and Highways (DPWH), Metropolitan Manila Development Authority (MMDA), Philippine Coast Guard (PCG), Philippine National Police (PNP) Maritime Group, and five other executive departments and agencies filed directly with this Court a petition for review under Rule 45. The Court, in a Resolution of December 9, 2002, sent the said petition to the CA for consolidation with the consolidated appeals of MWSS, LWUA, and PPA, docketed as CA-G.R. SP No. 74944.

Petitioners, before the CA, were one in arguing in the main that the pertinent provisions of the Environment Code (PD 1152) relate only to the cleaning of specific pollution incidents and do not cover cleaning in general. And apart from raising concerns about the lack of funds appropriated for cleaning purposes, petitioners also asserted that the cleaning of the Manila Bay is not a ministerial act which can be compelled by mandamus.

The CA Sustained the RTC

By a Decision^[6] of September 28, 2005, the CA denied petitioners' appeal and affirmed the Decision of the RTC *in toto*, stressing that the trial court's decision did not require petitioners to do tasks outside of their usual basic functions under existing laws.^[7]

Petitioners are now before this Court praying for the allowance of their Rule 45 petition on the following ground and supporting arguments:

THE [CA] DECIDED A QUESTION OF SUBSTANCE NOT HERETOFORE PASSED UPON BY THE HONORABLE COURT, I.E., IT AFFIRMED THE TRIAL

COURT'S DECISION DECLARING THAT SECTION 20 OF [PD] 1152 REQUIRES CONCERNED GOVERNMENT AGENCIES TO REMOVE ALL POLLUTANTS SPILLED AND DISCHARGED IN THE WATER SUCH AS FECAL COLIFORMS.

ARGUMENTS

I

[SECTIONS] 17 AND 20 OF [PD] 1152 RELATE ONLY TO THE CLEANING OF SPECIFIC POLLUTION INCIDENTS AND [DO] NOT COVER CLEANING IN GENERAL

II

THE CLEANING OR REHABILITATION OF THE MANILA BAY IS NOT A MINISTERIAL ACT OF PETITIONERS THAT CAN BE COMPELLED BY MANDAMUS.

The issues before us are two-fold. *First*, do Sections 17 and 20 of PD 1152 under the headings, *Upgrading of Water Quality* and *Clean-up Operations*, envisage a cleanup in general or are they limited only to the cleanup of specific pollution incidents? And *second*, can petitioners be compelled by mandamus to clean up and rehabilitate the Manila Bay?

On August 12, 2008, the Court conducted and heard the parties on oral arguments.

Our Ruling

We shall first dwell on the propriety of the issuance of mandamus under the premises.

The Cleaning or Rehabilitation of Manila Bay Can be Compelled by Mandamus

Generally, the writ of mandamus lies to require the execution of a ministerial duty. [8] A ministerial duty is one that "requires neither the exercise of official discretion nor judgment." [9] It connotes an act in which nothing is left to the discretion of the person executing it. It is a "simple, definite duty arising under conditions admitted or proved to exist and imposed by law." [10] Mandamus is available to compel action, when refused, on matters involving discretion, but not to direct the exercise of judgment or discretion one way or the other.

Petitioners maintain that the MMDA's duty to take measures and maintain adequate solid waste and liquid disposal systems necessarily involves policy evaluation and the exercise of judgment on the part of the agency concerned. They argue that the MMDA, in carrying out its mandate, has to make decisions, including choosing where a landfill should be located by undertaking feasibility studies and cost estimates, all of which entail the exercise of discretion.

Respondents, on the other hand, counter that the statutory command is clear and