

## EN BANC

[ G.R. NO. 129546, December 13, 2005 ]

**PROVINCE OF RIZAL, MUNICIPALITY OF SAN MATEO, PINTONG BOCAUE MULTIPURPOSE COOPERATIVE, CONCERNED CITIZENS OF RIZAL, INC., ROLANDO E. VILLACORTE, BERNARDO HIDALGO, ANANIAS EBUENGA, VILMA T. MONTAJES, FEDERICO MUNAR, JR., ROLANDO BEÑAS, SR., ET AL., AND KILOS BAYAN, INC., PETITIONERS, VS. EXECUTIVE SECRETARY, SECRETARY OF ENVIRONMENT & NATURAL RESOURCES, LAGUNA LAKE DEVELOPMENT AUTHORITY, SECRETARY OF PUBLIC WORKS & HIGHWAYS, SECRETARY OF BUDGET & MANAGEMENT, METRO MANILA DEVELOPMENT AUTHORITY AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.**

### DECISION

**CHICO-NAZARIO, J.:**

The earth belongs in usufruct to the living.<sup>[1]</sup>

At the height of the garbage crisis plaguing Metro Manila and its environs, parts of the Marikina Watershed Reservation were set aside by the Office of the President, through Proclamation No. 635 dated 28 August 1995, for use as a sanitary landfill and similar waste disposal applications. In fact, this site, extending to more or less 18 hectares, had already been in operation since 19 February 1990<sup>[2]</sup> for the solid wastes of Quezon City, Marikina, San Juan, Mandaluyong, Pateros, Pasig, and Taguig.<sup>[3]</sup>

This is a petition filed by the Province of Rizal, the municipality of San Mateo, and various concerned citizens for review on *certiorari* of the Decision of the Court of Appeals in CA-G.R. SP No. 41330, denying, for lack of cause of action, the petition for *certiorari*, prohibition and *mandamus* with application for a temporary restraining order/writ of preliminary injunction assailing the legality and constitutionality of Proclamation No. 635.

The facts are documented in painstaking detail.

On 17 November 1988, the respondent Secretaries of the Department of Public Works and Highways (DPWH) and the Department of Environment and Natural Resources (DENR) and the Governor of the Metropolitan Manila Commission (MMC) entered into a Memorandum of Agreement (MOA),<sup>[4]</sup> which provides in part:

1. The DENR agrees to immediately allow the utilization by the Metropolitan Manila Commission of its land property located at Pintong Bocaue in San Mateo, Rizal as a sanitary landfill site, subject to whatever restrictions that the government impact

assessment might require.

2. Upon signing of this Agreement, the DPWH shall commence the construction/development of said dumpsite.
3. The MMC shall: a) take charge of the relocation of the families within and around the site; b) oversee the development of the areas as a sanitary landfill; c) coordinate/monitor the construction of infrastructure facilities by the DPWH in the said site; and d) ensure that the necessary civil works are properly undertaken to safeguard against any negative environmental impact in the area.

On 7, 8 and 10 February 1989, the *Sangguniang Bayan* of San Mateo wrote Gov. Elfren Cruz of the MMC, Sec. Fiorello Estuar of the DPWH, the Presidential Task Force on Solid Waste Management, Executive Secretary Catalino Macaraig, and Sec. Fulgencio Factoran, Jr., pointing out that it had recently passed a Resolution banning the creation of dumpsites for Metro Manila garbage within its jurisdiction, asking that their side be heard, and that the addressees "suspend and temporarily hold in abeyance all and any part of your operations with respect to the San Mateo Landfill Dumpsite." No action was taken on these letters.

It turns out that the land subject of the MOA of 17 November 1988 and owned by the DENR was part of the Marikina Watershed Reservation Area. Thus, on 31 May 1989, forest officers of the Forest Engineering and Infrastructure Unit of the Community Environment and Natural Resource Office, (CENRO) DENR-IV, Rizal Province, submitted a Memorandum<sup>[5]</sup> on the "On-going Dumping Site Operation of the MMC inside (the) Upper Portion of Marikina Watershed Reservation, located at Barangay Pintong Bocaue, San Mateo, Rizal, and nearby localities." Said Memorandum reads in part:

Observations:

- 3.1 The subject area is arable and agricultural in nature;
- 3.2 Soil type and its topography are favorable for agricultural and forestry productions;

. . .

- 3.5 Said Dumping Site **is observed to be confined within the said Watershed Reservation**, bearing in the northeastern part of Lungsod Silangan Townsite Reservation. **Such illegal Dumping Site operation inside (the) Watershed Reservation is in violation of P.D. 705, otherwise known as the Revised Forestry Code**, as amended. . .

Recommendations:

- 5.1 The **MMC Dumping Site** Inside Marikina Watershed Reservation, particularly at Brgy. Pintong Bocaue, San Mateo, Rizal and at Bo. Pinugay, Baras/Antipolo, Rizal which are the present garbage zones **must totally be stopped and discouraged without any political intervention and delay in order to save our healthy ecosystems found therein, to avoid much destruction, useless efforts and lost (sic)**

**of millions of public funds over the land in question;**  
(Emphasis ours)

On 19 June 1989, the CENRO submitted another Investigation Report<sup>[6]</sup> to the Regional Executive Director which states in part that:

1. About two (2) hectares had been excavated by bulldozers and garbage dumping operations are going on.
2. The dumping site is without the concurrence of the Provincial Governor, Rizal Province and without any permit from DENR who has functional jurisdiction over the Watershed Reservation; and
3. About 1,192 families residing and cultivating areas covered by four (4) Barangays surrounding the dumping site will adversely be affected by the dumping operations of MMC including their sources of domestic water supply. x x x x

On 22 January 1990, the CENRO submitted still another Investigation Report<sup>[7]</sup> to the Regional Executive Director which states that:

Findings show that the areas used as Dumping Site of the MMC are found to be within the Marikina Watershed which are part of the Integrated Social Forestry Project (ISF) as per recorded inventory of Forest Occupancy of this office.

It also appears that as per record, there was no permit issued to the MMC to utilize these portions of land for dumping purposes.

It is further observed that the use of the areas as dumping site greatly affects the ecological balance and environmental factors in this community.

On 19 February 1990, the DENR Environmental Management Bureau, through Undersecretary for Environment and Research Celso R. Roque, granted the Metro Manila Authority (MMA [formerly MMC]) an Environmental Compliance Certificate (ECC) for the operation of a two-and-a-half-hectare garbage dumpsite.

The ECC was sought and granted to comply with the requirement of Presidential Decree No. 1586 "Establishing an Environmental Impact Statement System," Section 4 of which states in part that, "No persons, partnership or corporation shall undertake or operate any such declared environmentally critical project or area without first securing an Environmental Compliance Certificate." Proclamation No. 2146, passed on 14 December 1981, designates "all areas declared by law as national parks, **watershed reserves**, wildlife preserves, and sanctuaries" as "Environmentally Critical Areas"

On 09 March 1990, respondent Laguna Lake Development Authority (LLDA), through its Acting General Manager, sent a letter<sup>[8]</sup> to the MMA, which reads in part:

Through this letter we would like to convey our reservation on the choice of the sites for solid waste disposal inside the watershed of Laguna Lake. As you may already know, **the Metropolitan Waterworks and**

**Sewerage System (MWSS) has scheduled the abstraction of water from the lake to serve the needs of about 1.2 million residents of Muntinlupa, Paranaque, Las Pinas and Bacoor, Cavite by 1992.**

Accordingly, the Laguna Lake Development Authority (LLDA) is accelerating its **environmental management program to upgrade the water quality of the lake in order to make it suitable as a source of domestic water supply** the whole year round. **The said program regards dumpsites as incompatible within the watershed because of the heavy pollution, including the risk of diseases, generated by such activities which would negate the government's efforts to upgrade the water quality of the lake.**

Consequently, please consider our objection to the proposed location of the dumpsites within the watershed. (Emphasis supplied by petitioners)

On 31 July 1990, less than six months after the issuance of the ECC, Undersecretary Roque suspended the ECC in a letter<sup>[9]</sup> addressed to the respondent Secretary of DPWH, stating in part that:

Upon site investigation conducted by Environmental Management Bureau staff on development activities at the San Mateo Landfill Site, **it was ascertained that ground slumping and erosion have resulted from improper development of the site.** We believe that this will adversely affect the environmental quality in the area if the proper remedial measures are not instituted in the design of the landfill site. This is therefore contradictory to statements made in the Environmental Impact Statement (EIS) submitted that above occurrences will be properly mitigated.

In view of this, we are forced to suspend the Environmental Compliance Certificate (ECC) issued until appropriate modified plans are submitted and approved by this Office for implementation. (Emphasis ours)

On 21 June 1993, the Acting Mayor of San Mateo, Enrique Rodriguez, Jr., Barangay Captain Dominador Vergara, and petitioner Rolando E. Villacorte, Chairman of the Pintong Bocaue Multipurpose Cooperative (PBMC) wrote<sup>[10]</sup> then President Fidel V. Ramos expressing their objections to the continued operation of the MMA dumpsite for causing "unabated pollution and degradation of the Marikina Watershed Reservation."

On 14 July 1993, another Investigation Report<sup>[11]</sup> submitted by the Regional Technical Director to the DENR Undersecretary for Environment and Research contained the following findings and recommendations:

Remarks and Findings:

. . . .

5. Interview with Mr. Dayrit, whose lot is now being endangered because soil erosion have (sic) caused severe siltation and sedimentation of the Dayrit Creek which water is greatly polluted by the dumping of soil bulldozed to the creek;

6. Also interview with Mrs. Vilma Montajes, the multi-grade teacher of Pintong Bocaue Primary School which is located only about 100 meters from the landfill site. She disclosed that bad odor have (sic) greatly affected the pupils who are sometimes sick with respiratory illnesses. These odors show that MMA have (sic) not instituted/sprayed any disinfectant chemicals to prevent air pollution in the area. Besides large flies (Bangaw) are swarming all over the playground of the school. The teacher also informed the undersigned that plastic debris are being blown whenever the wind blows in their direction.
7. As per investigation report ... there are now 15 hectares being used as landfill disposal sites by the MMA. The MMA is intending to expand its operation within the 50 hectares.
8. Lots occupied within 50 hectares are fully planted with fruit bearing trees like Mangoes, Santol, Jackfruit, Kasoy, Guyabano, Kalamansi and Citrus which are now bearing fruits and being harvested and marketed to nearby San Mateo Market and Masinag Market in Antipolo.

. . . .

#### Recommendations:

1. As previously recommended, the undersigned also strongly recommend(s) that the MMA be made to relocate the landfill site because the area is within the Marikina Watershed Reservation and Lungsod Silangan. The leachate treatment plant ha(s) been eroded twice already and contaminated the nearby creeks which is the source of potable water of the residents. The contaminated water also flows to Wawa Dam and Boso-boso River which also flows to Laguna de Bay.
2. The proposed Integrated Social Forestry Project be pushed through or be approved. ISF project will not only uplift the socio-economic conditions of the participants but will enhance the rehabilitation of the Watershed considering that fruit bearing trees are vigorously growing in the area. Some timber producing species are also planted like Mahogany and Gmelina Arboiea. There are also portions where dipterocarp residuals abound in the area.
3. The sanitary landfill should be relocated to some other area, in order to avoid any conflict with the local government of San Mateo and the nearby affected residents who have been in the area for almost 10-20 years.

On 16 November 1993, DENR Secretary Angel C. Alcala sent MMA Chairman Ismael A. Mathay, Jr. a letter<sup>[12]</sup> stating that "after a series of investigations by field officials" of the DENR, the agency realized that the MOA entered into on 17 November 1988 "is a very costly error because the area agreed to be a garbage dumpsite is inside the Marikina Watershed Reservation." He then strongly