



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

**LUVIMIN CEBU MINING CORP.
and LUVIMIN PORT SERVICES
COMPANY, INC.,**

Petitioners,

- versus -

**CEBU PORT AUTHORITY and
PORT MANAGER ANGELO C.
VERDAN,**

Respondents.

G.R. No. 201284

Present:

VELASCO, JR., J.,
Chairperson,
PERALTA,
VILLARAMA, JR.,
REYES, and
JARDELEZA, JJ.

Promulgated:

November 19, 2014

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RESOLUTION

REYES, J.:

For resolution is the appeal filed by petitioners Luvimin Cebu Mining Corp. and Luvimin Port Services Company, Inc. (petitioners) from the Decision¹ dated October 19, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 03790, which nullified the Orders dated February 19, 2008² and August 27, 2008³ of the Regional Trial Court (RTC) of Cebu City, Branch 10, in Civil Case No. CEB-33654, ordering the issuance of a writ of preliminary injunction against the Cebu Port Authority (CPA).

The facts are not disputed.

¹ Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pampio A. Abarintos and Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 48-61.

² Issued by Judge Soliver C. Peras; *id.* at 91-102.

³ *Id.* at 104-111.

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On October 28, 1997, a Certificate of Registration and Permit to Operate was issued by the CPA to the petitioners authorizing them to operate a private port facility at *Barangay* Talo-ot, Argao, Cebu until December 31, 2022.⁴

On March 1, 2006, CPA rescinded the foregoing registration/permit on the following grounds:

1. A Foreshore Lease Agreement (FLA) is a prerequisite in the approval of a port license. Your foreshore lease application was still pending with the DENR during the approval of said license.
2. Said foreshore lease application was denied per DENR letter dated 04 November 1999 for the reason that your area cannot be subjected for foreshore lease but instead for a special land use application which is the Other Lawful Purposes (OLP).
3. You submitted your application for OLP sometime in the year 2000 but until now no permit is granted.⁵

CPA declared the registration/permit defective, forthwith took possession of the port facility, and started to fence the premises.⁶

These events prompted the petitioners to file a complaint for Injunction and Damages with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction before the RTC against CPA, its Port Manager, Angelo Verdan (Verdan), and John Does (respondents).

In their complaint, the petitioners alleged that the unilateral cancellation of their permit/license denied them due process of law.⁷ In 1985, the petitioners reclaimed the parcel of land in *Barangay* Talo-ot and built thereon a wharf using their own money. The wharf is a roll-on-roll-off (RORO) facility for the transport of vehicles, goods and passengers without having to use cargo handling equipment and giving the public low-cost alternative transport and cargo handling services.⁸

The CPA letter dated March 1, 2006 rescinding their license was issued without any prior warning. Sometime in June 2006, CPA and Verdan built a Field Office inside the wharf without any notice to the petitioners.

⁴ Id. at 77-79.

⁵ Id. at 80.

⁶ Id. at 49.

⁷ Id. at 88.

⁸ Id. at 50.

Sometime in August 2007, the CPA almost completed fencing the premises of the wharf and the ramp from the pier towards the sea.⁹

In support of their prayer for a TRO and/or writ of preliminary injunction, the petitioners averred that their right to operate the Talo-ot Port in Argao, Cebu is clear and unmistakable. CPA had no legal basis to rescind the petitioners' registration/permit in view of the favorable endorsements they have obtained from the *Barangay* Captain of Talo-ot, *Sangguniang Bayan* of Argao, Office of the Provincial Planning and Indorsement and the Undersecretary and Officer-in-Charge of the Department of Tourism. The petitioners also claimed that they were already granted an Environmental Compliance Certificate by the Office of the Executive Regional Director of the Department of Environment and Natural Resources (DENR) in Region VII. The petitioners further averred that CPA's invasion of their right to operate the wharf is material and substantial and, thus, there is a paramount necessity for an injunctive writ to prevent serious damage.¹⁰

On August 31, 2007, the RTC issued the Order¹¹ directing the issuance of a TRO effective for twenty (20) days and setting the hearing for the application for preliminary injunction, *viz*:

Accordingly, let a Temporary Restraining Order be issued preventing [respondent] Cebu Port [A]uthority from prohibiting the [petitioners] in entering the premises. However, [respondent] CPA may still maintain possession of the facility which they have constructed pending the determination by this Court of the case. CPA may not be prevented by [the petitioners] from exercising proprietary right over the building which it has constructed and from protecting the said structure and facility from destruction.

Because of the life of the [T]emporary Restraining Order which is only for twenty (20) days, set the hearing for preliminary injunction on September 10, 2007 at 2:00 in the afternoon.

X X X X

SO ORDERED.¹²

The respondents thereafter submitted their memorandum in opposition to the issuance of a writ of preliminary injunction. They asserted that CPA has an on-going infrastructure project at the Talo-ot Port which forms part of the Nautical Highway envisioned by former President Gloria

⁹ Id. at 92.

¹⁰ Id. at 50.

¹¹ Issued by Pairing Judge Geraldine Faith A. Econg; id. at 87-90.

¹² Id. at 90.

Macapagal-Arroyo. Considering that it is a national project, only the Supreme Court can restrain the same pursuant to Republic Act (R.A.) No. 8975.¹³

The respondents also argued that an injunctive writ is moot and academic considering that they have already taken over the Talo-ot Port since March 1, 2006 by implementing two projects – the repair of the existing RORO ramp and asphaltting of the back-up area, and the construction of the Provision Office, Passenger Terminal, Covered Catwalk, Repair of Pavement and Armor Slope Protection. In any event, the acts sought to be enjoined at the Talo-ot Port in Argao is beyond the territorial jurisdiction of the RTC of Cebu City.¹⁴

The respondents pointed out that the petitioners have no tenurial instrument from the DENR such as a Foreshore Lease Agreement (FLA), Miscellaneous Lease Application or Other Lawful Purpose Permit. In fact, the petitioners' application for FLA was denied because the subject area is classified as timberland which cannot be the subject of an FLA. The petitioners also committed forum-shopping by filing a complaint with the RTC despite the on-going proceedings before the DENR involving tenurial issues between CPA and the petitioners over the reclaimed land and the port. The petitioners also failed to exhaust all their administrative remedies.¹⁵

In response, the petitioners asseverated that an FLA was never a requirement for the issuance of their Certificate of Registration and Permit to Operate. The reclassification of the reclaimed land on the port by the DENR did not validly authorize CPA to unilaterally revoke the petitioners' license/permit and it should have instead awaited the proper reclassification of the land. They denied that proceedings are simultaneously held before the DENR involving a similar issue. They claimed that only notices were sent to them and it is only CPA which needs to resolve issues with the DENR. The petitioners also averred that the case falls within the exceptions provided by R.A. No. 8975.¹⁶

In an Order¹⁷ dated February 19, 2008, the RTC granted the petitioners' application for the issuance of a writ of preliminary injunction. In so ruling, the RTC reasoned that it was premature for the CPA to take

¹³ AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS BY PROHIBITING LOWER COURTS FROM ISSUING TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS OR PRELIMINARY MANDATORY INJUNCTIONS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES. Enacted on November 7, 2000. Id. at 93.

¹⁴ Id. at 92-94.

¹⁵ Id. at 93-94.

¹⁶ Id. at 94.

¹⁷ Id. at 91-102.

over the port's premises without giving the petitioners the opportunity to iron things out or be given proper notification for them to vacate. CPA could not take over the premises without proper transference because to do so would violate every person's right not to be deprived of his property without due process of law. The RTC further held that Talo-ot wharf is a private wharf and was never a project of the government or any of its instrumentalities. Also, the petitioners' FLA was filed in 1985 but it was only acted upon by the DENR in 1999 by denying the same for the reason that the area cannot be subjected to foreshore lease. The petitioners thereafter filed a Special Land Use Application for Other Lawful Purposes, but until now the DENR has not acted on it. CPA should not have taken over the port facility pending the DENR's action on the petitioners' application.

The RTC further explained that the principle of exhaustion of administrative remedies can be properly disregarded in this case since the petitioners were deprived of their right to due process. The RTC also held that the prohibition in R.A. No. 8975 on the issuance of restraining orders by courts against government infrastructure projects is not absolute. The prohibition will not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a TRO is issued, grave injustice and irreparable injury will arise. Irreparable injury and grave injustice was found to have been caused to the petitioners by CPA's premature takeover of the port. The only reason why the petitioners' license was rescinded was their failure to comply with the requirements needed for continued operation. CPA should have given the petitioners ample time to comply. And, even if the port facility is a government project, the petitioners are entitled to a just compensation for their expenses in building the port. Accordingly, the RTC decision was disposed as follows:

WHEREFORE, after thoroughly evaluating the various pleadings filed by the parties of this case, taking into account the arguments raised in support of their respective positions, this Court hereby RESOLVES:

- 1) To GRANT the issuance of a Writ of Preliminary Injunction, enjoining [respondents] CEBU PORT AUTHORITY, PORT MANAGER ANGELO C. VERDAN, and all persons acting upon their authority to cease and desist from taking over the Talo-ot Wharf facility and constructing structures thereto [sic];
- 2) To DIRECT [the petitioners-corporations] to put up a bond in the amount of P2,000,000.00; and
- 3) To SET the case for pre-trial conference on March 27, 2008 at 8:30 in the morning.

ACCORDINGLY, the Sheriff of this Court is directed to issue a Writ of Preliminary Injunction upon payment of the appropriate bond by the [petitioners-corporation].

Furnish a copy of this Order to the parties and their respective counsel[s].

SO ORDERED.¹⁸

The respondents moved for reconsideration but their motion was denied in the RTC Order¹⁹ dated August 27, 2008. The respondents then sought recourse with the CA *via* a petition for *certiorari* under Rule 65 of the Rules of Court.

In its herein assailed Decision²⁰ dated October 19, 2011, the CA ruled that the RTC gravely abused its discretion in issuing the writ of preliminary injunction.

The CA ratiocinated that an injunctive writ cannot be issued to enjoin the respondents from taking over the port facility because the repair of the RORO ramp, asphaltting of back-up area, construction of office, passenger terminal and covered walk are considered as national government projects as defined in Section 2(a) of R.A. No. 8975 against which no injunctive writ can lie pursuant to Section 3 of the same law.

The CA further decreed that no irreparable injury was caused to the petitioners because whatever loss they will likely suffer from the revocation of their license/permit and takeover by the respondents of the port facility can be measured or quantified by way of damages, specifically, actual or compensatory damages, exemplary damages, as well as attorney's fees and costs of litigation.

The CA likewise held that enjoining the respondents from taking over the port's operation and maintenance during the pendency of the main case will be detrimental to the interest of the government and the public. This is in view of the fact that public funds are involved in the development of the port facility and, thus, there is a need to protect the government properties installed therein. Further, the acts sought to be restrained have become *fait accompli* because the respondents have already revoked the petitioners' license/permit and taken over the port by constructing and erecting permanent structures thereon. The CA decision disposed thus:

¹⁸ Id. at 101-102.

¹⁹ Id. at 104-111.

²⁰ Id. at 48-61.

WHEREFORE, the petition is **GRANTED**. The assailed Orders of the Regional Trial Court, Cebu City, Branch 10, dated 19 February 2008 and 27 August 2008 in Civil Case No. CEB-33654 are **NULLIFIED**. The RTC is **DIRECTED** to hear with dispatch the main case for “Injunction and Damages.”

SO ORDERED.²¹

The CA reiterated the foregoing judgment in its Resolution²² dated March 14, 2012 denying the petitioners’ motion for reconsideration. Hence, the present appeal arguing that: (a) Section 3 of R.A. No. 8975 cannot be applied because the wharf in Talo-ot Port was never a project of the government or any of its instrumentalities; and (b) the exceptional circumstance in Section 3 of R.A. No. 8975 is present because the petitioner’s constitutional right was violated since it was them who reclaimed and built the wharf in Talo-ot Port and have been in actual and continuous possession thereof for more than 20 years.

The Court denies the petition.

The CA correctly ruled that the RTC gravely abused its discretion when it issued the subject writ of preliminary injunction in contravention to the express provisions of Section 3 and Section 4 of R.A. No. 8975. The provisions read:

Section 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Mandatory Injunctions.* – No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private acting under the government direction, to restrain, prohibit or compel the following acts:

- (a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;
- (b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;
- (c) Commencement prosecution, execution, implementation, operation of any such contract or project;
- (d) Termination or rescission of any such contract/project;** and
- (e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is

²¹ Id. at 61.

²² Id. at 75-76.

of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

Section 4. *Nullity of Writs and Orders.* – Any temporary restraining order, preliminary injunction or preliminary mandatory injunction issued in violation of Section 3 hereof is void and of no force and effect. (Emphasis ours)

The prohibition covers national government projects defined in Section 2 of the same law, to wit:

Section 2. *Definition of Terms.* –

(a) “**National government projects**” shall refer to all current and future national government infrastructure, engineering works and service contracts, including projects undertaken by government-owned and -controlled corporations, all projects covered by Republic Act No. 6957, as amended by Republic Act No. 7718, otherwise known as the Build-Operate-and-Transfer Law, and other related and necessary activities such as site acquisition, supply and/or installation of equipment and materials, implementation, construction, completion, operation, maintenance, improvement, repair and rehabilitation, regardless of the source of funding.

x x x x (Emphasis ours)

The term *infrastructure projects* means “construction, improvement and rehabilitation of roads, and bridges, railways, airports, **seaports**, communication facilities, irrigation, flood control and drainage, water supply and sewerage systems, shore protection, power facilities, national buildings, school buildings, hospital buildings, and other related construction projects that form part of the government capital investment.”²³

²³

Republic of the Philippines v. Silerio, 338 Phil. 784, 791 (1997).

On the other hand, projects covered by R.A. No. 6957,²⁴ as amended by R.A. No. 7718,²⁵ pertain to those which are participated in by private entities, like the petitioners, thus:

SEC. 2.(a) *Private sector infrastructure or development projects.* – The general description of infrastructure or development projects normally financed and operated by the public sector but which will now be wholly or partly implemented by the private sector, including but not limited to, power plants, highways, ports, airports, canals, dams, hydropower projects, water supply, irrigation, telecommunications, railroads and railways, transport systems, land reclamation projects, industrial estates or townships, housing, government buildings, tourism projects, markets, slaughterhouses, warehouses, solid waste management, information technology networks and database infrastructure, education and health facilities, sewerage, drainage, dredging, and other infrastructure and development projects as may be authorized by the appropriate agency/LGU pursuant to this Act. Such projects shall be undertaken through contractual arrangements as defined hereunder and such other variations as may be approved by the President of the Philippines.

x x x x

SEC. 3. *Private Initiative in Infrastructure.* – All government infrastructure agencies, including government-owned and -controlled corporations (GOCC) and local government units (LGUs) are hereby authorized to enter into contract with any duly pre-qualified project proponent for the financing, construction, operation and maintenance of any financially viable infrastructure or development facility through any of the projects authorized in this Act. Said agencies, when entering into such contracts, are enjoined to solicit the expertise of individuals, groups, or corporations in the private sector who have extensive experience in undertaking infrastructure or development projects.

The contractual arrangement between the government or its instrumentality and a private entity are of various kinds and nomenclatures. They, however, share a common system whereby the private entity undertakes the construction, financing, operation and/or maintenance of a given infrastructure facility subject to its eventual transfer to the concerned government entity upon completion, after a fixed number of period or after the private entity has recouped its investments. This system permeates the arrangement between CPA and the petitioners as revealed in the following *proviso* of the latter's Certificate of Registration and Permit to Operate, *viz*:

²⁴ AN ACT AUTHORIZING THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF INFRASTRUCTURE PROJECTS BY THE PRIVATE SECTOR, AND FOR THE OTHER PURPOSES. Enacted July 9, 1990.

²⁵ AN ACT AMENDING CERTAIN SECTIONS OF REPUBLIC ACT NO. 6957, ENTITLED "AN ACT AUTHORIZING THE FINANCING, CONSTRUCTION, OPERATION AND MAINTENANCE OF INFRASTRUCTURE PROJECTS BY THE PRIVATE SECTOR, AND FOR OTHER PURPOSES. Approved on May 5, 1994.

2. This Certificate shall expire on 31 December 2022 provided that upon expiration of the period herein stipulated, said port facility shall become the property of the Cebu Port Authority, free from any liens and encumbrances, without any obligation on the part of the Cebu Port Authority to make reimbursement of the value thereof to the owner/operator.²⁶

Clearly, Talo-ot Port, where the petitioners operate their facility, is a national infrastructure project. The Certificate of Registration and Permit to Operate granted by the CPA is premised on a contract for a national infrastructure project contemplated by R.A. No. 6957, as amended by R.A. No. 7718, the termination or rescission of which cannot be validly enjoined by an injunctive writ issued by a lower court pursuant to R.A. No. 8975.

The petitioners cannot claim exception from the application of the prohibition on issuance of an injunctive writ. No constitutional issue of due process is involved because the petitioners were not deprived of any property or property right when their Certificate of Registration and Permit to Operate was cancelled. The petitioners were given a mere privilege to operate a private facility in Talo-ot Port; they were not given any property right on the port, its wharf and/or appurtenances. They had no vested right to operate a private port facility in Talo-ot Port and their certificate/permit can be withdrawn anytime as stated in the condition imposed by CPA, *viz*:

11. The grantee shall comply with existing and subsequent applicable rules of the Cebu Port Authority, and other laws and regulations promulgated or to be promulgated by proper authorities; and, failure of the grantee to comply with any of the conditions herein specified shall constitute sufficient ground for the Authority to cancel this Permit after proper proceedings.²⁷

The foregoing statement was appended in the petitioners' certificate/permit and was, thus, a sufficient notice to them that, at any time, it may be terminated should they be found non-compliant with the existing and subsequent rules promulgated by the CPA and/or other proper authorities.

Any issue of due process concerns only procedural matters in cancellations of permit by the CPA for purposes of determining whether it properly rescinded the privilege granted to the petitioners. It involves evidentiary issues which can only be fully threshed out in the main case still pending before the RTC. The other issues raised by the petitioners are likewise evidentiary and/or factual in nature that cannot be judiciously

²⁶ *Rollo*, p. 78.

²⁷ *Id.*

addressed in the present case which relates only to the application for a provisional writ.


In fine, this Court upholds the assailed judgment of the CA. The injunctive writ issued by the RTC in its Orders dated February 19, 2008 and August 27, 2008 were void for being contrary to R.A. No. 8975.


WHEREFORE, premises considered, the petition is hereby **DENIED**. The Decision dated October 19, 2011 of the Court of Appeals in CA-G.R. SP No. 03790 is **AFFIRMED**.

SO ORDERED.

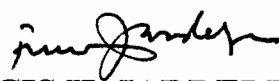

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

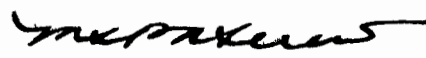
ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice

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