

## THIRD DIVISION

[ G.R. No. 192692, June 17, 2020 ]

**REYNALDO DELA CRUZ AND CATALINO C. FELIPE, PETITIONERS,  
VS. LEOPOLDO V. PARUMOG, GUARDIAN ANGEL ETERNITY  
GARDEN, AND MUNICIPALITY OF GUIMBA, NUEVA ECIJA,  
REPRESENTED BY HON. POCHOLO M. DIZON, RESPONDENTS.**

### DECISION

**GAERLAN, J.:**

#### The Case

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court against the February 26, 2010 Decision<sup>[1]</sup> and the June 25, 2010 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 88238, which reversed the Decision of the Regional Trial Court (RTC) Branch 31 of Guimba, Nueva Ecija, in a case for injunction.

#### Antecedents

Respondent Leopoldo V. Parumog (Parumog) sought to build the Guardian Angel Eternal Garden memorial park on a parcel of land owned by him and located at Barangay Cavite, Guimba, Nueva Ecija. To implement his proposal, Parumog sought the required permits and clearances from respondent Municipality of Guimba Local Government Unit (Guimba LGU) and the local government unit of Barangay Cavite (Barangay LGU).<sup>[3]</sup>

However, Parumog's proposal was opposed by the owners of the lots adjoining the proposed memorial park site, including petitioners Reynaldo dela Cruz and Catalino C. Felipe, who filed a complaint for injunction with prayer for temporary restraining order (TRO), dated June 15, 2004,<sup>[4]</sup> seeking to stop the construction of the memorial park. Alongside Parumog, the Guimba LGU was also impleaded as a defendant for allowing the project through its Resolution No. 33-04, despite the alleged violations of petitioners' rights to health and a balanced ecology. The complaint was docketed as Civil Case No. 1332-G and raffled off to Branch 31 of the RTC of Guimba. On June 25, 2004, the trial court granted petitioners' prayer for a TRO.<sup>[5]</sup>

Parumog and the Guimba LGU answered that Resolution No. 33-04 was approved and issued only after the former had complied with all the requirements for the establishment of a memorial park under the pertinent regulations. Furthermore, the project was approved by the Sangguniang Barangay of Cavite, Guimba, through its Kapasyahan Big. 02-2004. It was likewise approved by a majority of the adjoining residents<sup>[6]</sup> - petitioners included - during a consultation with personnel from the

Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR), as shown by their signatures in a manifesto entitled "Pag-endorso at Aming Suporta sa Binabalak ni G. Leopoldo V. Parumog na Gawing Memorial Park ang Kanyang Lote sa Barangay Cavite, Guimba, Nueva Ecija."<sup>[7]</sup> They likewise maintained that petitioners' fears of environmental pollution to be caused by the memorial park were unfounded since the park would observe the proper procedures and standards for ground burials. Parumog and the Guimba LGU further prayed for the lifting of the temporary restraining order and the dismissal of the complaint, as well as an award of exemplary damages, attorney's fees, and litigation expenses.

After due hearing and consideration of the parties' pleadings on the application for writ of preliminary injunction, the trial court found "serious legal flaws in the legality of Sangguniang Bayan Resolution No. 33-04." It therefore issued an Order, dated July 21, 2004, granting the application. Respondents filed a motion for reconsideration which was denied in an Order, dated November 5, 2004.<sup>[8]</sup> Pre-trial was then conducted, where the parties agreed on "the existence of TCT No. NT-3373 in the name of the defendant Leopoldo V. Parumog which covers the property in question."<sup>[9]</sup> The case then proceeded to trial on the merits.

### **The Ruling of the Trial Court**

In a Decision dated September 29, 2006,<sup>[10]</sup> the trial court ruled in favor of Dela Cruz, making the injunction against the construction of the memorial park permanent.

The trial court observed that Resolution No. 33-04 merely reclassified the proposed memorial park site into commercial land. It did not have the effect of designating the land as a burial ground. The trial court further noted that Barangay Cavite was not among the designated burial areas under the local zoning ordinance of Guimba; therefore, for the construction of Parumog's proposed memorial park to proceed, the Sangguniang Bayan of Guimba had to amend its municipal zoning ordinance. Since Resolution No. 33-04 had no such effect, it cannot, by itself, be considered an approval of the proposed memorial park. Furthermore, a municipal board resolution cannot amend a municipal ordinance. Nevertheless, the defect was cured by the Sangguniang Bayan's passage on October 25, 2004, of Ordinance No. 4-04, which introduced the necessary amendments to the municipal zoning ordinance.

The trial court thus considered the issue of whether the enactment of said amendatory ordinance satisfied the requirements set by the municipal zoning ordinance, i.e., whether the amendment was subjected to public hearing and was approved by either the Housing and Land Use Regulatory Board (HLURB) or the Sangguniang Panlalawigan (SP) of Nueva Ecija.<sup>[11]</sup> The court found that while there was sufficient evidence that public hearings were conducted, there was no proof that the amendatory ordinance was approved by the HLURB or the SP of Nueva Ecija. There being no proper amendment of the municipal zoning ordinance to include Barangay Cavite as a burial ground area, the injunction against Parumog's memorial park project was maintained by the trial court.<sup>[12]</sup>

### **The Ruling of the CA**

Acting on the appeal filed by Parumog and the Guimba LGU, the CA reversed the trial court's decision and dismissed the complaint for injunction.

Reducing the arguments raised by the appeal to the main issue of whether Ordinance No. 4-04 was approved by the HLURB or the SP of Nueva Ecija, the appellate court found that Parumog and the Guimba LGU were able to submit a copy of Kapasyahan Big. 181-S-2004 issued by the SP of Nueva Ecija, which categorically states that the provincial legislature approved the act of the Guimba municipal board. The said Kapasyahan reads:

TANGGAPAN NG SANGGUNIAN NG PANLALAWIGAN

KIMIS NG KATITIKAN NG IKA-21  
PANGKARANIWANG PULONG NG SANGGUNIAN  
PANLALAWIGAN NA GINANAP SA  
PANLALAWIGANG BULWAGANG PULUNGAN,  
PANLALAWIGANG KAPITOLYO, LUNGSOD NG  
PALAYAN NUONG

DISYEMBRE 06, 2004

XXX XXX XXX

KAPASIYAHAN BLG. 181-S-2004

SAPAGKAT, sa ilalim ng ICodigo ng Lokal na Pamahalaan ng 1991, Kabanata 3 Pangkat 56, ay itinatadhana ang kapangyarihan ng Sangguniang [sic] Panlalawigan upang siyasatin at pag-aralan kung naaayon at napapaloob sa kapangyarihan ng mga Sangguniang Bayan/Lungsod na kanilang nasasakupan, ang mga pinagtibay na Kapasiyahan o Kautusan,

SAPAGKAT, batay sa masusing pag-aaral ng Lupon sa Kapasiyahan at Kautusan, ang mga sumusunod na Kapasiyahan at Kautusan ay naaayon at napapaloob sa mga alituntuning itinatakda ng batas:

DAHIL DITO, sa mungkahi ng Kgg. Na Kagawad Allan A. Gamilla, na pinangalawahan ng Kgg. Na Kagawad Rudy J. de Leon, napagpasiyahan ng Kapulungan ng [sic] PAGTIBAYIN at ideklarang napapaloob sa kapangyarihang taglay ng Sangguniang Bayan/Panlungsod ang mga sumusunod na kapasiyahan:

Kap. Blg. 83-S-2004 (Ord. No. 04-S-2004), na may petsa Oktubre 25, 2004, na pinagtibay ng Sangguniang Bayan ng Guim[b]a, Nueva Ecija.

[13]

Given this explicit approval by the SP, the appellate court held that "*there is no basis for the trial court to rule that 'the said amendment (referring to SB Ordinance No. 4-04 dated October 25, 2004) is not yet effected because of non compliance [sic] with the requirement of the law for the approval/authentication of the same by the HLURB or the Sangguniang Panlalawigan*

of Nueva Ecija." [14]

The CA also held that Dela Cruz and Felipe have been precluded from claiming that they were not consulted before Resolution No. 33-04 converting Parumog's property for commercial purposes was passed, for they did not appeal from the RTC decision, and hence could not be made to benefit from the appeal filed by Parumog and the Guimba LGU.

### **The Issues**

Dela Cruz and Felipe moved for reconsideration, which the CA denied in the assailed June 25, 2010 resolution; hence, this petition, which raises the following issues: 1) Whether or not the CA erred in barring dela Cruz and Felipe from raising the issue of non-consultation on the ground that they cannot be benefited by the appeal filed by Parumog and the Guimba LGU; 2) Whether or not the CA erred in reversing the trial court ruling on the ground of the validity and due approval of Resolution No. 33-04 and Ordinance No. 4-04; and 3) Whether or not the rights of the adjoining lot owners to health, a healthful and balanced ecology, and due process were violated. [15]

### **The Ruling of the Court**

In an action for injunction, the plaintiff has to show that there is a right *in esse* that must be protected; and the act against which the injunction is directed to constitutes a violation of such right. [16] Furthermore, injunctive writs cannot be granted at the slightest sign of an alleged injury. In the antiquated but still leading case of *North Negros Sugar Co. v. Hidalgo*, [17] we said that:

... An injunction will not be granted when good conscience does not require it, where it will operate oppressively or contrary to justice, where it is not reasonable and equitable under the circumstances of the case, or where it will tend to promote, rather than to prevent, fraud and injustice. . . ." "... a court of equity may interfere by injunction to restrain a party from enforcing a legal right against all equity and conscience. . . ." ". . . The comparative convenience or inconvenience of the parties from granting or withholding the injunction sought should be considered, and none should be granted if it would operate oppressively or inequitably, or contrary to the real justice of the case. This doctrine is well established."

"The power of the courts to issue injunctions should be exercised with great caution and only where the reason and necessity therefor are clearly established; and while this rule has been applied more frequently in the case of preliminary and mandatory injunctions, it applies to injunctions of all classes, and to restraining orders. . . ." (citations omitted)

"The writ of injunction will not be awarded in doubtful or new cases not coming within well-established principles of equity." [18] x x x x

[I]njunction, being an equitable remedy, the granting thereof is dependent upon the sound discretion of the court. It is only in clear cases of abuse of discretion on the part of the trial judge that review on appeal

would be made. "There is no power the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or more dangerous in a doubtful case, than the issuing an injunction; it is the strong arm of equity, that never ought of law cannot afford an adequate or commensurate remedy in damages. The right must be clear, the injury impending or threatened, so as to be averted only by the protecting preventing process of injunction."<sup>[19]</sup>

Jurisprudence has laid down four essential requisites for the issuance of an injunctive writ: (1) That the petitioner applicant must have a clear and unmistakable right; (2) That there is a material and substantial invasion of such right; (3) That there is an urgent and permanent necessity for the writ to prevent serious damage; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.<sup>[20]</sup>

In the case at bar, the appellate court found that the trial court abused its discretion in issuing a permanent injunction against the memorial park project after finding that the Guimba LGU had passed a valid amendment to its zoning ordinance which paved the way for the construction of memorial parks in the territory of Barangay Cavite. Ordinance No. 4-04 provides:

SB ORDINANCE NO. 4-04  
October 25, 2004

BE IT ORDAINED BY THE SANGGUNIANG BAYAN OF GUIMBA, NUEVA ECIJA, IN SESSION ASSEMBLED.

Section 1. Title and Authority. This ordinance shall be cited as the amendatory ordinance on the proposed location of new cemeteries in Guimba, Nueva Ecija, and is enacted pursuant to the provision of Section 46 (Amendments to the Zoning Ordinance) of Municipal Ordinance No. 15, series of 2000, otherwise known as the Local Zoning Ordinance of Guimba, Nueva Ecija.

Section 2. Proposed site of new cemetery Barangay Cavite, being within the urban area zone classification, is hereby included as proposed location of new cemeteries in Guimba, Nueva Ecija in the Development Master Plan of Guimba, Nueva Ecija (2001-2005).

Section 3. Repealing Clause. All ordinances, rules, regulations and promulgations in conflict with the provisions of this resolution are hereby repealed, reversed, amended or modified accordingly.

Section 4. Effectivity. This ordinance shall take effect upon approval by the [H]LURB or the Sangguniang Panlalawigan of Nueva Ecija.<sup>[21]</sup>

It is clear from the quoted passage that all the ordinance does is to allow new cemeteries to be built in Barangay Cavite. There is nothing in the ordinance amounting to an approval or clearance of Parumog's proposed memorial park project, which must still comply with the applicable regulations, specifically HLURB Resolution No. 681-00, or the Amended Rules and Regulations for Memorial Parks/Cemeteries. Section 2 of said HLURB Resolution sets out the process and