

EN BANC

[G.R. No. 238467, February 12, 2019]

**MARK ANTHONY V. ZABAL, THITING ESTOSO JACOSALEM, AND
ODON S. BANDIOLA, PETITIONERS, V. RODRIGO R. DUTERTE,
PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES; SALVADOR
C. MEDIALDEA, EXECUTIVE SECRETARY; AND EDUARDO M. AÑO,
[SECRETARY] OF THE DEPARTMENT OF INTERIOR AND LOCAL
GOVERNMENT, RESPONDENTS.**

DECISION

DEL CASTILLO, J.:

Paradise is a place of bliss, felicity, and delight.^[1] For Filipinos and foreign nationals alike, Boracay - a small island in Malay, Aklan, with its palm-fringed, pristine white sand beaches, azure waters, coral reefs, rare seashells,^[2] and a lot more to offer,^[3] - is indeed a piece of paradise. Unsurprisingly, Boracay is one of the country's prime tourist destinations. However, this island-paradise has been disrespected, abused, degraded, over-used, and taken advantage of by both locals and tourists. Hence, the government gave Boracay its much-needed respite and rehabilitation. However, the process by which the rehabilitation was to be implemented did not sit well with petitioners, hence, the present petition.

The Case

Before this Court is a Petition for Prohibition and Mandamus with Application for Temporary Restraining Order, Preliminary Injunction, and/or Status *Quo Ante* Order filed by petitioners Mark Anthony V. Zabal (Zabal), Thiting Estoso Jacosalem (Jacosalem), and Odon S. Bandiola (Bandiola) against respondents President Rodrigo R. Duterte (President Duterte), Executive Secretary Salvador C. Medialdea, and Secretary Eduardo M. Año of the Department of Interior and Local Government (DILG).

The Parties

Zabal and Jacosalem are both residents of Boracay who, at the time of the filing of the petition, were earning a living from the tourist activities therein. Zabal claims to build sandcastles for tourists while Jacosalem drives for tourists and workers in the island. While not a resident, Bandiola, for his part, claims to occasionally visit Boracay for business and pleasure. The three base their *locus standi* on direct injury and also from the transcendental importance doctrine.^[4] Respondents, on the other hand, are being sued in their capacity as officials of the government.

The Facts

Claiming that Boracay has become a cesspool, President Duterte first made public his plan to shut it down during a business forum held in Davao sometime February

2018.^[5] This was followed by several speeches and news releases stating that he would place Boracay under a state of calamity. True to his words, President Duterte ordered the shutting down of the island in a cabinet meeting held on April 4, 2018. This was confirmed by then Presidential Spokesperson Harry L. Roque, Jr. in a press briefing the following day wherein he formally announced that the total closure of Boracay would be for a maximum period of six months starting April 26, 2018.^[6]

Following this pronouncement, petitioners contend that around 630 police and military personnel were readily deployed to Boracay including personnel for crowd dispersal management.^[7] They also allege that the DILG had already released guidelines for the closure.^[8]

Petitioners claim that ever since the news of Boracay's closure came about, fewer tourists had been engaging the services of Zabal and Jacosalem such that their earnings were barely enough to feed their families. They fear that if the closure pushes through, they would suffer grave and irreparable damage. Hence, despite the fact that the government was then yet to release a formal issuance on the matter,^[9] petitioners filed the petition on April 25, 2018 praying that:

- (a) Upon the filing of [the] petition, a TEMPORARY RESTRAINING ORDER (TRO) and/or a WRIT OF PRELIMINARY PROHIBITORY INJUNCTION be immediately issued RESTRAINING and/or ENJOINING the respondents, and all persons acting under their command, order, and responsibility from enforcing a closure of Boracay Island or from banning the petitioners, tourists, and non-residents therefrom, and a WRIT OF PRELIMINARY MANDATORY INJUNCTION directing the respondents, and all persons acting under their command, order, and responsibility to ALLOW all of the said persons to enter and/or leave Boracay Island unimpeded;
- (b) In the alternative, if the respondents enforce the closure after the instant petition is filed, that a STATUS QUO ANTE Order be issued restoring and maintaining the condition prior to such closure;
- (c) After proper proceedings, a judgment be rendered PERMANENTLY RESTRAINING and/or ENJOINING the respondents, and all persons acting under their command, order, and responsibility from enforcing a closure of Boracay Island or from banning the petitioners, tourists, and non-residents therefrom, and further DECLARING the closure of Boracay Island or the ban against petitioners, tourists, and non-residents therefrom to be UNCONSTITUTIONAL.

Other reliefs just and equitable under the premises are similarly prayed for.^[10]

On May 18, 2018, petitioners filed a Supplemental Petition^[11] stating that the day following the filing of their original petition or on April 26, 2018, President Duterte issued Proclamation No. 475^[12] formally declaring a state of calamity in Boracay and ordering its closure for six months from April 26, 2018 to October 25, 2018. The

closure was implemented on even date. Thus, in addition to what they prayed for in their original petition, petitioners implore the Court to declare as unconstitutional Proclamation No. 475 insofar as it orders the closure of Boracay and ban of tourists and nonresidents therefrom.^[13]

In the Resolutions dated April 26, 2018^[14] and June 5, 2018,^[15] the Court required respondents to file their Comment on the Petition and the Supplemental Petition, respectively. Respondents filed their Consolidated Comment^[16] on July 30, 2018 while petitioners filed their Reply^[17] thereto on October 12, 2018.

On October 26, 2018, Boracay was reopened to tourism.

Petitioners' Arguments

Petitioners state that a petition for prohibition is the appropriate remedy to raise constitutional issues and to review and/or prohibit or nullify, when proper, acts of legislative and executive officials. An action for *mandamus*, on the other hand, lies against a respondent who unlawfully excludes another from the enjoyment of an entitled right or office. Justifying their resort to prohibition and *mandamus*, petitioners assert that (1) this case presents constitutional issues, *i.e.*, whether President Duterte acted within the scope of the powers granted him by the Constitution in ordering the closure of Boracay and, whether the measures implemented infringe upon the constitutional rights to travel and to due process of petitioners as well as of tourists and non-residents of the island; and, (2) President Duterte exercised a power legislative in nature, thus unlawfully excluding the legislative department from the assertion of such power.

As to the substantive aspect, petitioners argue that Proclamation No. 475 is an invalid exercise of legislative powers. They posit that its issuance is in truth a law-making exercise since the proclamation imposed a restriction on the right to travel and therefore substantially altered the relationship between the State and its people by increasing the former's power over the latter. Simply stated, petitioners posit that Proclamation No. 475 partakes of a law the issuance of which is not vested in the President. As such, Proclamation No. 475 must be struck down for being the product of an invalid exercise of legislative power.

Likewise, petitioners argue that Proclamation No. 475 is unconstitutional for infringing on the constitutional rights to travel and to due process.

Petitioners point out that although Section 6, Article III of the Constitution explicitly allows the impairment of the right to travel, two conditions, however, must concur to wit: (1) there is a law restricting the said right, and (2) the restriction is based on national security, public safety or public health. For petitioners, neither of these conditions have been complied with. For one, Proclamation No. 475 does not refer to any specific law restricting the right to travel. Second, it has not been shown that the presence of tourists in the island poses any threat or danger to national security, public safety or public health.

As to the right to due process, petitioners aver that the same covers property rights and these include the right to work and earn a living. Since the government, through Proclamation No. 475, restricted the entry of tourists and non-residents into the island, petitioners claim that they, as well as all others who work, do business, or earn a living in the island, were deprived of the source of their livelihood as a

result thereof. Their right to work and earn a living was curtailed by the proclamation. Moreover, while Proclamation No. 475 cites various violations of environmental laws in the island, these, for the petitioners, do not justify disregard of the rights of thousands of law-abiding people. They contend that environmental laws provide for specific penalties intended only for violators. Verily, to make those innocent of environmental transgressions suffer the consequences of the Boracay closure is tantamount to violating their right to due process.

Petitioners likewise argue that the closure of Boracay could not be anchored on police power. For one, police power must be exercised not by the executive but by legislative bodies through the creation of statutes and ordinances that aim to promote the health, moral, peace, education, safety, and general welfare of the people. For another, the measure is unreasonably unnecessary and unduly oppressive.

In their Supplemental Petition, petitioners aver that Proclamation No. 475 unduly impinges upon the local autonomy of affected Local Government Units (LGUs) since it orders the said LGUs to implement the closure of Boracay and the ban of tourists and non-residents therefrom. While petitioners acknowledge the President's power of supervision over LGUs, they nevertheless point out that he does not wield the power of control over them. As such, President Duterte can only call the attention of the LGUs concerned with regard to rules not being followed, which is the true essence of supervision, but he cannot lay down the rules himself as this already constitutes control.

Finally, petitioners state that this case does not simply revolve on the need to rehabilitate Boracay, but rather, on the extent of executive power and the manner by which it was wielded by President Duterte. To them, necessity does not justify the President's abuse of power.

Respondents' Arguments

At the outset, respondents assert that President Duterte must be dropped as party-respondent in this case because he is immune from suit. They also argue that the petition should be dismissed outright for lack of basis. According to respondents, prohibition is a preventive remedy to restrain future action. Here, President Duterte had already issued Proclamation No. 475 and in fact, the rehabilitation of the island was then already ongoing. These, according to respondents, have rendered improper the issuance of a writ of prohibition considering that as a rule, prohibition does not lie to restrain an act that is already *fait accompli*. Neither is *mandamus* proper. Section 3, Rule 65 of the Rules of Court provides that a *mandamus* petition may be resorted to when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. Respondents argue that *mandamus* will not lie in this case because they were not neglectful of their duty to protect the environment; on the contrary, they conscientiously performed what they were supposed to do by ordering the closure of Boracay to give way to its rehabilitation. Thus, to them, *mandamus* is obviously inappropriate.

At any rate, respondents contend that there is no real justiciable controversy in this case. They see no clash between the right of the State to preserve and protect its natural resources and the right of petitioners to earn a living. Proclamation No. 475 does not prohibit anyone from being gainfully employed.

Respondents moreover maintain that the petition is in the nature of a Strategic Lawsuit Against Public Participation (SLAPP) under Rule 6 of A.M. No. 09-6-8-SC or the Rules of Procedure for Environmental Cases, or a legal action filed to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights. Respondents thus assert that the petition must be dismissed since it was filed for the said sole purpose.

With regard to the substantive aspect, respondents contend that the issuance of Proclamation No. 475 is a valid exercise of delegated legislative power, it being anchored on Section 16 of Republic Act (RA) No. 10121, otherwise known as the Philippine Disaster Risk Reduction and Management Act of 2010, or the authority given to the President to declare a state of calamity, viz.:

SECTION 16. *Declaration of State of Calamity.* - The National Council shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof, based on the criteria set by the National Council. The President's declaration may warrant international humanitarian assistance as deemed necessary.

x x x x

They likewise contend that Proclamation No. 475 was issued pursuant to the President's executive power under Section 1, Article VII of the Constitution. As generally defined, executive power is the power to enforce and administer laws. It is the power of implementing the laws and enforcing their due observance. And in order to effectively discharge the enforcement and administration of the laws, the President is granted administrative power over bureaus and offices, which includes the power of control. The power of control, in turn, refers to the authority to direct the performance of a duty, restrain the commission of acts, review, approve, reverse or modify acts and decisions of subordinate officials or units, and prescribe standards, guidelines, plans and programs. Respondents allege that President Duterte's issuance of Proclamation No. 475 was precipitated by his approval of the recommendation of the National Disaster Risk Reduction and Management Council (NDRRMC) to place Boracay under a state of calamity. By giving his *imprimatur*, it is clear that the President merely exercised his power of control over the executive branch.

In any case, respondents assert that the President has residual powers which are implied from the grant of executive power and which are necessary for him to comply with his duties under the Constitution as held in the case of *Marcos v. Manglapus*.^[18]

In sum, respondents emphasize that the issuance of Proclamation No. 475 is within the ambit of the powers of the President, not contrary to the doctrine of separation of powers, and in accordance with the mechanism laid out by the Constitution.

Further, respondents dispute petitioners' allegation that Proclamation No. 475 infringes upon the rights to travel and to due process. They emphasize that the right to travel is not an absolute right. It may be impaired or restricted in the interest of national security, public safety, or public health. In fact, there are already several existing laws which serve as statutory limitations to the right to travel.