

## THIRD DIVISION

[ G.R. No. 195905, July 04, 2018 ]

**THE CITY GOVERNMENT OF BAGUIO REPRESENTED BY MAURICIO G. DOMOGAN, CITY MAYOR, CITY BUILDINGS AND ARCHITECTURE OFFICE REPRESENTED BY OSCAR FLORES, AND PUBLIC ORDER AND SAFETY DIVISION REPRESENTED BY FERNANDO MOYAEN AND CITY DEMOLITION TEAM REPRESENTED BY NAZITA BAÑEZ, PETITIONERS, VS. ATTY. BRAIN MASWENG, REGIONAL HEARING OFFICER-NATIONAL COMMISSION ON INDIGENOUS PEOPLES-CORDILLERA ADMINISTRATIVE REGION, MAGDALENA GUMANGAN, MARION T. POOL, LOURDES C. HERMOGENO, JOSEPH LEGASPI, JOSEPH BASATAN, MARCELINO BASATAN, JOSEPHINE LEGASPI, LANSIGAN BAWAS, ALEXANDER AMPAGUEY, JULIO DALUYEN, SR., CONCEPCION PADANG AND CARMEN PANAYO, RESPONDENTS.**

### DECISION

**MARTIRES, J.:**

This petition for review on certiorari seeks to reverse and set aside the 5 August 2010 Decision<sup>[1]</sup> and 31 January 2011 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 110598.

The present controversy stemmed from the various orders issued by the National Commission on Indigenous Peoples-Cordillera Administrative Region (NCIP-CAR) in NCIP Case Nos. 29-CAR-09 and 31-CAR-09.

### THE FACTS

#### ***The Petitions***

Private respondents Magdalena Gumangan, Marion T. Pool, Lourdes C. Hermogeno; Bernardo Simon, Joseph Legaspi, Joseph Basatan, Marcelino Basatan, Josephine Legaspi, and Lansigan Bawas (*Gumangan petition*) are the petitioners in NCIP Case No. 29-CAR-09. In their petition,<sup>[3]</sup> filed on 23 July 2009, they prayed that their ancestral lands in the Busol Forest Reserve be identified, delineated, and recognized and that the corresponding Certificate of Ancestral Land Title (CALT) be issued. In addition, the Gumangan petition sought to restrain the City Government of Baguio, et al., (*petitioners*) from enforcing demolition orders and to prevent the destruction of their residential houses at the Busol Forest Reserve pending their application for identification of their ancestral lands before the NCIP Ancestral Domains Office.

On the other hand, private respondents Alexander Ampaguey, Sr., Julio Daluyen, Sr., Concepcion Padang, and Carmen Panayo (*Ampaguey petition*) are the petitioners in

NCIP Case No. 31-CAR-09. In their petition,<sup>[4]</sup> filed on 23 July 2009, they prayed that the petitioners be enjoined from enforcing the demolition orders affecting their properties inside the Busol Forest Reserve. The Ampaguey Petition claimed that they have pending applications for their ancestral land claims before the NCIP.

Both the Gumangan and Ampaguey petitions assail that petitioners have no right to enforce the demolition orders and to evict them from their properties. They aver that their claims over their ancestral lands are protected and recognized under Republic Act (R.A.) No. 8371 or the Indigenous Peoples Rights Act of 1997 (IPRA).

### ***Proceedings before the NCIP-CAR***

In his 27 July 2009 Order,<sup>[5]</sup> public respondent Atty. Brain Masweng (*Atty. Masweng*), NCIP-CAR Hearing Officer, issued a 72-Hour Temporary Restraining Order (TRO) on the Gumangan petition. On the same date, he issued another order<sup>[6]</sup> for a 72-Hour TRO on the Ampaguey petition. On 14 August 2009, Atty. Masweng issued a writ of preliminary injunction in NCIP Case Nos. 29-CAR-09<sup>[7]</sup> and 31-CAR-09.<sup>[8]</sup>

Aggrieved, petitioners filed a petition for certiorari<sup>[9]</sup> before the CA assailing the TRO and preliminary injunction issued by Atty. Masweng in the above NCIP case.

### ***The CA Ruling***

In its 5 August 2010 decision, the CA dismissed petitioners' petition for certiorari for being procedurally flawed because they did not file a motion for reconsideration before the NCIP. The appellate court elucidated that the present petition constituted forum shopping because petitioners had a pending motion to dismiss before the NCIP. Further, the CA ruled that the NCIP had the power to issue the injunctive relief noting that the NCIP did not act with grave abuse of discretion because the issuances were in accordance with law. It ruled:

**WHEREFORE**, the petition is **DISMISSED**. The assailed issuances **STAND**. Costs against Petitioners.<sup>[10]</sup>

Petitioners moved for reconsideration, but the same was denied by the CA in its assailed 31 January 2011 resolution.

Hence, this present petition raising the following:

### **ISSUES**

I.

WHETHER THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR CERTIORARI FOR BEING PROCEDURALLY DEFECTIVE; AND

II.

WHETHER PRIVATE RESPONDENTS WERE ENTITLED TO INJUNCTIVE RELIEF.

## THE COURT'S RULING

The petition is meritorious.

Before proceeding to the merits of the case, a resolution of certain procedural matters is in order.

### ***Case mooted due to supervening events***

At the onset, the present case has been rendered moot and academic. A moot and academic case is one that ceases to present a justifiable controversy by virtue of supervening events, so that declaration thereon would be of no practical value.<sup>[11]</sup>

In *City Government of Baguio v. Atty. Masweng (contempt case)*,<sup>[12]</sup> the Court set aside the provisional remedies Atty. Masweng issued in NCIP Case Nos. 29-CAR-09 and 31-CAR-09 after he was found guilty of indirect contempt, to wit:

In this case, respondent was charged with indirect contempt for issuing the subject orders enjoining the implementation of demolition orders against illegal structures constructed on a portion of the Busol Watershed Reservation located at Aurora Hill, Baguio City.

x x x x

The said orders clearly contravene our ruling in G.R. No. 180206 that those owners of houses and structures covered by the demolition orders issued by petitioner are not entitled to the injunctive relief previously granted by respondent.

x x x x

As mentioned earlier, the Court while recognizing that the NCIP is empowered to issue temporary restraining orders and writs of preliminary injunction, nevertheless ruled that petitioners in the injunction case seeking to restrain the implementation of the subject demolition order are not entitled to such relief. Petitioner City Government of Baguio in issuing the demolition advices are simply enforcing the previous demolition orders against the same occupants or claimants or their agents and successors-in-interest, only to be thwarted anew by the injunctive orders and, writs issued by respondent. Despite the Court's pronouncements in G.R. No. 180206 that no such clear legal right exists in favor of those occupants or claimants to restrain the enforcement of the demolition orders issued by petitioner, and hence there remains no legal impediment to bar their implementation, respondent still issued the temporary restraining orders and writs of preliminary injunction. x x x

x x x x

**WHEREFORE**, the petition for contempt is **GRANTED**. The assailed Temporary Restraining Order dated July 27, 2009, Order dated July 31, 2009, and Writ of Preliminary Injunction in NCIP Case No. 31-CAR-09, and Temporary Restraining Order dated July 27, 2009, Order dated July

As a general rule, the Court no longer entertains petitions which have been rendered moot. After all, the decision would have no practical value. Nevertheless, there are exceptions where the Court resolves moot and academic cases, viz: (a) there was a grave violation of the Constitution; (b) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar, and the public; and (4) the case was capable of repetition yet evading review.<sup>[14]</sup>

In the case at bar, there are exceptions warranting an affirmative action from the Court. The case definitely involves paramount public interest as it pertains to the Busol Water Reserve, a source of basic necessity of the people of Baguio and other neighboring communities. In addition, the present issues are likely to be repeated especially considering the other cases involving land claimants over the Busol Water Reserve.

***Exceptions to the requirement of a motion for reconsideration in petitions for certiorari***

A petition for certiorari is resorted to whenever a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>[15]</sup> It is an extraordinary remedy available only when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.<sup>[16]</sup> In other words, *certiorari* is a solution of last resort availed of after all possible legal processes have been exhausted.

Thus, it is axiomatic that a motion for reconsideration is a condition precedent to the filing of a petition for certiorari.<sup>[17]</sup> This is so considering that the said motion is an existing remedy under the rules for a party to assail a decision or ruling adverse to it. Nonetheless, the rule requiring a motion for reconsideration to be filed before a petition for certiorari is available admits of exception. In *Republic of the Philippines v. Pantranco North Express, Inc.*,<sup>[18]</sup> the Court recognized the following exceptions:

1. Where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
2. Where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
3. Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or the petitioner or the subject matter of the petition is perishable;
4. Where, under the circumstances, a motion for reconsideration would be useless;

5. Where the petitioner was deprived of due process and there is extreme urgency for relief;
6. Where, in a criminal case, a relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
7. Where the proceedings in the lower court are a nullity for lack of due process;
8. Where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and
9. Where the issue raised is one purely of law or public interest is involved.<sup>[19]</sup>

The Court finds that exceptions exist to warrant petitioners' direct resort to a petition for certiorari before the CA notwithstanding its lack of a motion for reconsideration filed before the NCIP. *First*, the issues had been duly raised before the NCIP especially considering that petitioner had presented similar arguments or opposition from the TRO initially issued by the NCIP until the grant of the writ of preliminary injunction. *Second*, there is urgency in the petition because petitioners seek to implement its demolition orders with the goal of preserving the Busol Forest Reserve, Baguio's primary forest and watershed. It cannot be gainsaid that any delay may greatly prejudice the government as the Busol Forest Reserve may be further compromised. *Third*, the preservation of the Busol Forest Reserve involves public interest as it would have a significant impact on the water supply for the City of Baguio.

### ***No forum shopping if different reliefs are prayed for***

The CA also found petitioners' petition for certiorari dismissible for violating the rule on forum shopping. It opined that a ruling on the said petition for certiorari would amount to *res judicata* in view of the petitioners' motion to dismiss filed before the NCIP.

Forum shopping exists when a party, against whom an adverse judgment or order has been rendered in one forum, seeks a favorable opinion in another forum, other than by appeal or special civil action for certiorari it is the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.<sup>[20]</sup> The following are the elements of forum shopping: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.<sup>[21]</sup>

The petition for certiorari filed before the CA did not amount to forum shopping despite the existence of the motion to dismiss before the NCIP. The two actions involved different reliefs based on different facts. In their petition, petitioners questioned the issuance of provisional remedies by the NCIP and prayed that these