

## FIRST DIVISION

[ G.R. No. 204639, February 15, 2017 ]

**SAN FRANCISCO INN, HERETO REPRESENTED BY ITS  
AUTHORIZED REPRESENTATIVE, LEODINO M. CARANDANG,  
PETITIONER, VS. SAN PABLO CITY WATER DISTRICT,  
REPRESENTED BY ITS GENERAL MANAGER ROGER F. BORJA AND  
THE SPCWD INVESTIGATING BOARD, RESPONDENTS.**

### D E C I S I O N

#### **CAGUIOA, J:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision dated September 14, 2011<sup>[1]</sup> of the Court of Appeals<sup>[2]</sup> (CA) in CA-G.R. CV No. 95617, modifying the Decision dated May 25, 2010<sup>[3]</sup> of the Regional Trial Court of San Pablo City, Branch 32 (RTC), declaring valid the imposition of production charges/fees by respondent San Pablo City Water District (SPCWD) on commercial and industrial users/operators of deep wells in San Pablo City and upholding the right of SPCWD to demand payment of production charges/fees in accordance with existing rates from petitioner San Francisco Inn (SFI) and for the latter to pay interest thereon from their imposition starting in 1998. The review of the Resolution dated November 13, 2012<sup>[4]</sup> of the CA, denying SFI's motion for reconsideration of the CA Decision, is also sought in the petition.

While there were several issues raised by SFI before the RTC and the CA, the singular issue it raised in the petition is whether the CA erred in upholding SPCWD's right to impose production assessment in the absence of any findings or proof that SFI's use of ground water was injuring or reducing SPCWD's financial condition and impairing its ground water source, pursuant to Section 39 of Presidential Decree No. 198 (PD 198) and Section 11 of the "Rules Governing Ground Water Pumping and Spring Development Within the Territorial Jurisdiction of San Pablo City Water District" (the Rules).<sup>[5]</sup>

SFI argues that both the law and the Rules provide the following specific conditions before any water district may adopt and levy ground water production assessment:

- (1) Prior due notice to entities within the district extracting ground water for commercial and industrial uses, and hearing on the water district's plan to adopt and levy a ground water production assessment or impose special charges at fixed rate; and
- (2) A finding by the Board of Directors of the water district that production of ground water by such entities is: (i) adversely affecting the water district's financial condition **and** (ii) impairing its ground water sources.<sup>[6]</sup>

### **The Facts and Antecedent Proceedings**

The RTC, in its Decision dated May 25, 2010, made the following findings which are relevant to the issue posed above:

The facts are not in dispute while the proceedings are of record.

The petitioner [SFI] is a hotel business establishment situated at Brgy. San Francisco Calihan, San Pablo City. In 1996, petitioner caused the construction of two (2) deep-well pumps for the use of its business. The pumps, which have a production capacity of four (4) liters per second each, bear the following specification[s]: size of casing [-] 2.0"; size of column pipe - 1.5"; pump setting - 60 feet; and motor HP rating - 1.5 HP.

The respondent [SPCWD] is a local water utility organized under Resolution No. 309, approved by the Municipal Board of the City of San Pablo, on December 17, 1973, absorbing the former San Pablo Waterworks System and its facilities. Its operation is under the National Water Resources Board, formerly Council (NWRB), which is the national agency vested with authority to control and regulate the utilization, exploitation, development, conservation and operation of water resources pursuant to Presidential Decree No. 1067, otherwise known as the "Water Code of the Philippines" (Water Code) and Presidential Decree No. 198, the "Local Water Utilities Administration Law". The respondent [SPCWD] is managed by a Board of Directors.

In 1977, the respondent [SPCWD] promulgated the Rules Governing Groundwater Pumping and Spring Development Within the Territorial Jurisdiction of the San Pablo City Water District. These rules were approved by the NWRB in its 88<sup>th</sup> meeting held on January 23, 1978. The provisions of the Rules relevant to this case are [Sections 10<sup>[7]</sup>, 11<sup>[8]</sup> and 12<sup>[9]</sup>].

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Pursuant to Section 80 of PD 1067, the NWRB in its Memorandum dated February 4, 1997, deputized the respondent to perform the following functions:

"xxx

"1. To accept, process, investigate and make recommendation on water permit applications on sources located within the territorial jurisdiction of the Water District.

2. To monitor drilling wells and other water resources development activities in your area for conformance with the provision of the Water Code and the rules and regulations of the Water District as approved by the Board.

3. To coordinate with the Offices of the DPWH-DE and NIA-PIO and other concerned agencies for the orderly and timely

completion of necessary field activities related.

"xxx."

xxx In a letter dated 26 January 1998, the respondent's General Manager Roger F. Borja, invited petitioner and other deep-well users in San Pablo City, to a meeting to discuss the imposition of production assessment fees. The meeting proceeded as scheduled on February 19, 1998, with several deep-well owners present, among which is the petitioner. The topic discussed during the meeting involved the legality of the imposition of production fees and the rate of production fees to be imposed. No concrete agreement was reached except that the deep-well users just agreed to submit within fifteen (15) days a position paper either individually or collectively. xxx On March 26, 1998, deep-well users, including petitioner submitted their position paper opposing the imposition of the production assessment fee on the ground that the same "is inequitable and constitutes an unjust discrimination against such users."

On September 11, 1998, petitioner [SFI] filed an application for water permit with the NWRB. In a letter dated November 14, 1998, the DPWH District Engineer requested petitioner to submit clearances from the barangay chairman, the city mayor and the respondent water district. It appears that petitioner failed to comply except the submission of a barangay clearance certificate, and a certification dated 17 November 1998, issued by the respondent's Engr. Virgilio L. Amante, respondent's Engineering and Production Division Manager, stating among others that "the extraction of water has no adverse effect on the existing water supply and system of the San Pablo City Water District," but "without prejudice to the water district implementation of production assessment charges in the future."

On June 1, 1999, the respondent sent the petitioner a copy of a draft Memorandum of Agreement, regarding the proposed imposition of production assessment fee at P0.50 per cubic meter of water drawn from the well. The petitioner [SFI], however, did not sign the MOA. The respondent [SPCWD] in a letter dated November 9, 1999, again wrote the petitioner asking the latter to approve and/or sign the MOA.

On 30 July 2001, the Board of Directors of the respondent's (sic) passed a Board Resolution No. 050, Series of 2001, creating an investigating panel to investigate, hear and decide violations of the Water Code. The panel was composed of the Legal Counsel as Chairman, and then Senior Industrial Relations Management Officer and the Commercial Division Manager, as members, of the respondent. In an Order dated August 30, 2001, the Investigating Board directed the petitioner to appear and submit evidence "WHY NO CEASE AND DESIST ORDER AND CLOSURE OF OPERATION of the water well" should be issued against the petitioner. Petitioner through counsel submitted a Manifestation and Motion on September 12, 2001, asking that the Order of August 30, 2001, be set aside and that it be furnished copy of the specific complaint against it. In

an Order dated September 25, 2001, the Investigating Board resolved  
xxx:

"xxxx

In the interest of justice and for the reasons advanced in his motion, [petitioner SFI] is hereby ordered to appear before the Investigating Board on Tuesday, October 2, 2001 at 9:30 a.m. for continuation of the investigation and to submit [its] evidence why NO CEASE AND DESIST ORDER AND CLOSURE OF OPERATION of the water well against you and your corporation shall be issued pursuant to Board Resolution No. 045, Series of 1995 and Section 15 of the approved San Pablo City Water District Rules in Resolution No. 883, dated January 23, 1978 by the NWRB."

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On November 19, 2001, prior to the issuance of the [Order dated November 20, 2001, submitting the matter for resolution due to the failure of petitioner [SFI] or counsel to appear on October 2, 2001, despite receipt of notice], the [p]etitioner instituted the instant petition seeking to enjoin the respondent water district and its General Manager, from further investigating and hearing IB No. 006, entitled "San Pablo City Water District vs. San Francisco Inn," as its continuance will work injustice and/or irreparable damage or injury to the petitioner and will mean closure of its hotel business operation. On November 28, 2001, the respondents through counsel filed a Motion to Dismiss anchored on the arguments that the Court has no jurisdiction over the subject matter, and for lack of cause of action against the respondents. The petitioner filed its opposition to the motion to dismiss, contending that the Court has jurisdiction over the subject matter of the case and that it has a valid cause of action against the petitioner (sic). The Court, in an Order dated February 1, 2002, denied the motion to dismiss, directing the respondents to file their answer xxx. On February 27, 2002, the respondents submitted their answer, maintaining its (sic) position that the NWRB, not the Court[, ] has jurisdiction to hear the subject matter of the case, and that injunction is not the proper remedy there being an administrative remedy available to the petitioner.

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In the interim, the Investigating Board came out with its Report and Resolution in IB-Case No. 006, dated April 9, 2002, recommending to the respondent's Board of Directors, the following:

"1. To issue a CEASE AND DESIST ORDER AND CLOSURE OF OPERATION of their deepwell (sic) constructed by the [petitioner] without the required water permit;

"2. To demand the required payment of the appropriations of water without permit from October 1999 up to the present, the equivalent value of the consumption to be paid to the

district;

"3. That a CEASE AND DESIST ORDER AND CLOSURE OF OPERATION of the water supply be issued by the Board of Directors of the appropriate agency after the lapse of 15 days from the issuance of approval order by the Board. The order that may be issued by the Board based on the recommendation be enforced by the designated enforcing officer with the assistance of the Philippine National Police as provided in PD 1067.

"xxx."

From the above Report and Resolution, the petitioner filed a Motion for Reconsideration on May 14, 2002, on the following grounds: a) the authority of the respondent has already been questioned in the action for injunction; b) that the respondent has not shown proof that the extraction/drawing of water by the petitioner had caused injury upon the respondent's financial condition; and c) the petitioner had already filed a water permit application which is pending before the NWRB. In a 1<sup>st</sup> Indorsement dated May 15, 2002, the Investigating Board referred the above-mentioned Motion for Reconsideration to the respondent's Board of Directors for appropriate action. At this juncture, it may well be pointed out that the Board of Directors of the respondent has not yet taken action on the above Report and Resolution of the Investigating Board.

In addition to the above action taken by the petitioner, it also filed before this Court a Motion for Issuance of a Writ of Preliminary Mandatory Injunction, to enjoin the respondent and its Board of Directors "not to proceed in IB case No. 006 and/or from doing any further acts that could possibly disturb the status quo and will render the instant case moot and academic pending the final adjudication of the instant case in the higher interest of equity, fair play and substantial justice." The respondents through counsel filed an Opposition to the motion on May 18, 2002, contending that the matters discussed in the subject motion, "are questions to be determined on the merits of the case," such that to rule on it "would be to rule on the main case of the petition which is injunction xxx." In a Supplemental Manifestation filed on May 28, 2002, the petitioner argued that it had already filed a water permit application which remained unacted upon and that the operation of a deep-well did not affect the water supply system of the respondent.

At the hearing on June 28, 2002, petitioner and counsel appeared but respondents and counsel did not. On motion by the petitioner, the Court gave it a period of ten (10) days to file its formal offer of exhibits, and for respondents to file their comment therein. On July 17, 2002, the petitioner formally offered Exhibits "A" to "I". On July 19, 2002, the respondents opposed the admission of the petitioner's exhibits on the ground that no formal hearing was conducted as to warrant the offer of the said exhibits. In an Order dated November 19, 2002, the Court admitted Exhibits "A" to "I" of the petitioner, in support of its prayer for the issuance of prohibitory mandatory injunction.