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THIRD DIVISION

[G.R. NO. 185320, April 19, 2017]

ROSENDO DE BORJA, PETITIONER, VS. PINALAKAS NA UGNAYAN NG MALILIIT NA MANGINGISDA NG LUZON, MINDANAO AT VISAYAS ("PUMALU-MV"), PAMBANSANG KATIPUNAN NG MGA SAMAHAN SA KANAYUNAN ("PKSK") AND TAMBUYOG DEVELOPMENT CENTER, INC. ("TDCI"), RESPONDENTS;

REPUBLIC OF THE PHILIPPINES, OPPOSITOR.

[G.R. NO. 185348]

TAMBUYOG DEVELOPMENT CENTER, INC., REPRESENTED BY DINNA L. UMENGAN, PETITIONER, VS. ROSENDO DE BORJA, PINALAKAS NA UGNAYAN NG MALILIIT NA MANGINGISDA NG LUZON, MINDANAO AT VISAYAS ("PUMALU-MV"), REPRESENTED BY CESAR A. HAWAK, AND PAMBANSANG KATIPUNAN NG MGA SAMAHAN SA KANAYUNAN ("PKSK"), REPRESENTED BY RUPERTO B. ALEROZA, RESPONDENTS;

REPUBLIC OF THE PHILIPPINES, OPPOSITOR.

JARDELEZA, J.:

Petitioners call upon us to disregard procedural rules on account of the alleged novelty and transcendental importance of the issue involved here. However, the transcendental importance doctrine cannot remedy the procedural defects that plague this petition. In the words of former Supreme Court Chief Justice Reynato Puno, *"no amount of exigency can make this Court exercise a power where it is not proper."*[1] A petition for declaratory relief, like any other court action, cannot prosper absent an actual controversy that is ripe for judicial determination.

In these consolidated petitions,[2] petitioners Rosendo De Borja (De Borja) and Tambuyog Development Center, Inc. (TDCI) seek to nullify the February 21, 2008 Decision[3] and November 3, 2008 Resolution[4] of the Court of Appeals (CA) in CA-G.R. CV No. 87391. The CA reversed the March 31, 2006 Decision[5] of the Regional Trial Court (RTC) of Malabon City-Branch 74 and dismissed, on the ground of prematurity, the petition for declaratory relief filed by De Borja and the petition-in-intervention filed by respondents Pinalakas na Ugnayan ng Maliiiit na Mangingisda ng Luzon, Mindanao at Visayas (PUMALU-MV), Pambansang Katipunan ng mga Samahan sa Kanayunan (PKSK), and TDCI.[6]

On February 16, 2004, De Borja, a commercial fishing operator, filed a Petition for Declaratory Relief[7] (De Borja's petition) with the RTC of Malabon City. He asked the court to construe and declare his rights under Section 4(58) of Republic Act No.

8550 or The Philippine Fisheries Code of 1998 (1998 Fisheries Code). De Borja asked the court to determine the reckoning point of the 15-kilometer range of municipal waters, as provided under Section 4(58) of the 1998 Fisheries Code, in relation with Rule 4.1 (a) of its Implementing Rules and Regulations (IRR).[8] Section 4(58) of the 1998 Fisheries Code and Rule 4.1 (a) of the IRR respectively read:

> Sec. 4(58). *Municipal waters* – include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under Republic Act No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also **marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline.** Where two (2) municipalities are so situated on opposite shores that there is less than thirty (30) kilometers of marine waters between them, the third line shall be equally distant from opposite shore of the respective municipalities. (Emphasis and underscoring supplied.)
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> Rule 4.1 (a) *Coastline* – refers to the outline of the mainland shore touching the sea at mean lower low tide.

De Borja pleaded that the construction of the reckoning point of the 15-kilometer range affects his rights because he is now exposed to apprehensions and possible harassments that may be brought by conflicting interpretations of the 1998 Fisheries Code.[9] He further claimed that varying constructions of the law would spark conflict between fishermen and law enforcers, and would ultimately affect food security and defeat the purpose of the 1998 Fisheries Code.[10]

De Borja, however, did not implead any party as respondent in his petition. The RTC, in an Order[11] dated March 9, 2004, directed the Office of the Solicitor General (OSG) to file a comment.

Meanwhile, the National Mapping and Resource Information Authority (NAMRIA), through Engr. Enrique A. Macaspac, Chief of Geodesy and Geophysics Division, filed a letter-request to intervene and comment on the petition.[12] In its Comment,[13] NAMRIA stated that Rule 4.1 (a) used the term "coastline," while Section 4(58) specified "general coastline." It thus concluded that the definition of "coastline" in Rule 4.1 (a) is valid only for municipalities without any island. NAMRIA explained that by definition, the "general coastline" of a municipality without any island is simply the coastline of the mainland (or mainland shore) of that municipality. On the other hand, a municipality with island/s has the coastline/s of its island/s; hence, its general coastline consists of not only the coastline of its mainland (or mainland shore) but also the coastline/s of its island/s.[14] Thus, where the municipality is archipelagic, the archipelagic principle shall apply in delineating municipal waters, *i.e.,* the 15-kilometer range of the municipal waters of an archipelagic municipality

shall be reckoned not only from the coastline of the mainland but also from the coastline/s of the island/s of that municipality, such coastline/s of the island/s being part and parcel of the general coastline of that municipality.[15]

NAMRIA also gave their opinion as to whether the phrase "including offshore islands" in the phrase "a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline" refer to the "third line" (meaning, the third line includes or encloses the islands) or to the "general coastline" (meaning, the general coastline includes the coastline/s of the island/s). NAMRIA noted that "general coastline" precedes the word "including;" thus, "including offshore islands" must be referring to the "general coastline." NAMRIA also noted that the "third line" is qualified by two conditions: the third line is (1) parallel with the general coastline including offshore islands and (2) 15 kilometers from such coastline. NAMRIA concluded that to satisfy both conditions, the phrase "including offshore islands" must refer to the "general coastline," or in other words, must use the archipelagic principle.[16] NAMRIA stated that "including offshore islands" appeared only in the 1998 Fisheries Code. Earlier laws, which defined municipal waters, did not have it. NAMRIA then theorized that its presence in Section 4(58) of the 1998 Fisheries Code does not rule out the applicability of the archipelagic principle in delineating municipal waters. This interpretation is technically correct and consistent with the procedure in delimiting maritime boundaries under the United Nations Convention on the Law of the Sea.[17]

In its Comment,[18] the OSG narrated the events that led De Borja to file the petition. The OSG averred that the root cause of the petition was the adoption of the archipelagic principle in delineating and delimiting municipal waters of municipalities with offshore islands under Department of Environment and Natural Resources (DENR) Administrative Order No. 2001-17[19] (DAO 17).[20] Specifically, Section 5(B)(l)(c) of DAO 17 provides:

> Sec. 5. Systems and Procedures, x x x
> B. Procedure for Delineation and Delimitation of Municipal Waters
>
> 1. Delineation of Municipal Waters
>
> x x x
>
> *c) Use of Municipal archipelagic baselines*
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> **i. Where the territory of a municipality includes several islands, the outermost points of such islands shall be used as basepoints and connected by municipal archipelagic baselines, provided that the length of such baselines shall not exceed thirty (30) kilometers.**
> **ii. The municipal archipelagic baselines shall determine the general coastline of the municipality for purposes of delineation and delimitation.**
> iii. Islands, isles, or islets located more than

thirty (30) kilometers from the mainland of the municipality shall have their own separate coastlines.

iv. Rocks, reefs, cays, shoals, sandbars, and other features which are submerged during high tide shall not be used as basepoints for municipal archipelagic baselines. Neither shall they have their own coastlines.

v. The outer limits of the municipal waters of the municipality shall be enclosed by a line parallel to the municipal archipelagic baselines and fifteen (15) kilometers therefrom. (Emphasis supplied.)

The OSG detailed that on September 21, 2001, the Committee on Appropriations of the House of Representatives adopted Committee Resolution No. 2001-01 (House Committee Resolution) which recommended the revocation of DAO 17 for being tainted with legal infirmities.[21] The House Committee Resolution stated that the DENR has no jurisdiction to issue DAO 17 because Section 123[22] of the 1998 Fisheries Code clearly referred to the Department of Agriculture (DA) as the department which shall determine the outer limits of municipal waters.[23] More importantly, the House Committee Resolution claimed that DAO 17 directly contravened the 1998 Fisheries Code and the Local Government Code (LGC). The House Committee Resolution explained that the phrase "including offshore islands" in Section 4(58) of the 1998 Fisheries Code means that offshore islands are deemed to be within 15 kilometers from the shorelines; therefore, negating the applicability of the archipelagic principle.[24] DAO 17, however, authorized otherwise. The implementation of DAO 17, therefore, would vastly reduce the fishing grounds already defined under the 1998 Fisheries Code and result in adverse effects to the fishing industry and the nation's food security.[25]

The House Committee Resolution was also sent to the DENR for appropriate action. The DENR, however, did not act on it. Thus, upon request of the House Committee on Appropriations, the Legal Affairs Bureau (LAB) of the House of Representatives issued a legal opinion on the validity of DAO 17. The LAB echoed the legal arguments contained in the House Committee Resolution. It asserted that the employment of the phrase "including offshore islands" was intentional to remove any doubt as to where the 15 kilometers should be reckoned from—that is, from the general coastline of the actual mainland and not from the archipelagic baseline.[26]

The matter was also referred to the Department of Justice (DOJ) for opinion. On November 27, 2002, the DOJ issued Opinion No. 100, which stated that the DA, not the DENR, has jurisdiction to authorize the delineation of municipal waters.[27] The DOJ then dispensed with the determination of whether DAO 17, which adopted the archipelagic principle in the delineation of municipal waters, was consistent with the provisions of the 1998 Fisheries Code.[28] As a result of the DOJ Opinion, the DENR Secretary revoked DAO 17 through DENR Administrative Order No. 2003-07.[29]

The OSG stressed that the DA was in the process of formulating guidelines for the

delineation and delimitation of municipal waters. In fact, the DA conducted a Fisheries Summit on November 12 to 13, 2003 to consult small fisherfolk and the commercial fishing sector on the definition of municipal waters. However, these negotiations reached an impasse, which then triggered De Borja's filing of the petition before the RTC.[30]

The OSG explained the two conflicting views on the delineation of municipal waters, namely: (1) the archipelagic principle espoused by the Municipalities of the Philippines and small fisher folk; and (2) the mainland principle favored by the commercial fishing sector.[31] Under the mainland principle, the 15-kilometer range shall be reckoned from the municipality's coastline including offshore islands. The archipelagic principle, on the other hand, reckons the 15-kilometer range of municipal waters from the outermost offshore islands, and not the mainland. The outer limits of the municipal waters of the municipality shall be enclosed by a line parallel to the municipal archipelagic baseline and 15 kilometers therefrom.[32]

The OSG argued that the mainland principle should be adopted. It stated that the adoption of the archipelagic principle found in Article I of the 1987 Constitution, which is utilized in defining the Philippine territory *vis-a-vis* other states, is relevant only when the issue of intrusion into Philippine territorial water arises—that is, when foreign fishing vessels enter Philippine territorial waters.[33]

The OSG further explained that:

> The phrase "including offshore islands" used to modify general coastline in **Section 4(58) of R.A. No. 8550** shows the legislative intent that the mainland shall be the reckoning point of the fifteen kilometer range of municipal waters, and not the archipelagic municipal baseline. To adopt the archipelagic municipal baseline as the reckoning point would be to render the phrase "including offshore islands" redundant because offshore islands would be deemed already included in drawing the archipelagic baseline.
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> A correct grammatical construction of the questioned provision would indicate that the word "such" in the phrase "including offshore islands and fifteen kilometers from such coastline" refers to the general coastline, and not to an archipelagic municipal baseline. Coastline as defined under Rule 4.1 (a) of the Implementing Rules and Regulations of **R.A. No. 8550** "refers to the outline of the mainland shore touching the sea at mean lower tide." x x x[34]

The OSG also cited the House of Representatives Committee Deliberations on the 1998 Fisheries Code to show that the intent of the lawmakers is to reckon the 15-kilometer range of the municipal waters from the "shoreline."[35]

On August 16, 2004, PUMALU-MV, PKSK and TDCI (collectively, the intervenors) filed a Motion for Leave to File Intervention,[36] which the RTC granted. In their Petition-in-Intervention,[37] the intervenors claimed that, as small fisherfolk engaged in