

FIRST DIVISION

[G.R. No. 195003, June 07, 2017]

CITY OF BATANGAS, REPRESENTED BY HON. SEVERINA VILMA ABAYA,^[1] IN HER CAPACITY AS CITY MAYOR OF BATANGAS, PETITIONER, VS. PHILIPPINE SHELL PETROLEUM CORPORATION AND SHELL PHILIPPINES EXPLORATION B.V., RESPONDENTS.

DECISION

CAGUIOA, J:

The policy of ensuring the autonomy of local governments was not intended to create an *imperium in imperio* and install intra-sovereign political subdivisions independent of the sovereign state.^[2] As agents of the state, local governments should bear in mind that the police power devolved to them by law must be, at all times, exercised in a manner consistent with the will of their principal.

The Case

This is a petition for review on *certiorari*^[3] (Petition) filed under Rule 45 of the Rules of Court against the Decision^[4] dated May 25, 2010 (Assailed Decision) and Resolution^[5] dated December 30, 2010 (Assailed Resolution) in CA-G.R. CV No. 90373 rendered by the Tenth Division of the Court of Appeals (CA). The Assailed Decision and Resolution stem from an appeal from the Decision^[6] dated June 29, 2007 rendered by the Regional Trial Court of Batangas City (RTC), Branch 84 in SP. Civil Case Nos. 7924-7925, declaring as invalid Ordinance No. 3, series of 2001,^[7] (Assailed Ordinance), enacted by the *Sangguniang Panlungsod (Sangguniang Panlungsod)* of the City of Batangas (Batangas City).^[8]

The Facts

Batangas City is a local government unit created by virtue of its charter, Republic Act No. 5495 (RA 5495). Under RA 5495, Batangas City constitutes a political body corporate, and is endowed with powers which pertain to a municipal corporation.^[9] The *Sangguniang Panlungsod* is the legislative body of Batangas City.

Philippine Shell Petroleum Corporation (PSPC) is a duly organized Philippine corporation engaged in the business of manufacturing, refining and distribution of petroleum products.^[10] PSPC owns and operates a refinery situated in Tabangao, Batangas City (Tabangao Refinery).^[11]

Shell Philippines Exploration, B.V. (SPEX) is a foreign corporation licensed to do business in the Philippines.^[12] In furtherance of the mandate of Presidential Decree No. 87 (PD 87) to promote the discovery and production of indigenous petroleum,

the Department of Energy (DOE) executed Service Contract No. 38 (SC 38) with SPEX under which SPEX was tasked to explore and develop possible petroleum sources in North Western Palawan.^[13] SPEX's exploration led to the discovery of an abundant source of natural gas in the Malampaya field off the shores of Palawan, which thereafter gave rise to the Malampaya Project. The Malampaya Project required the construction of a 504-kilometer offshore pipeline for the transport of natural gas from Malampaya field to Batangas, for treatment in PSPC's Tabangao Refinery.^[14]

On May 28, 2001, the *Sangguniang Panlungsod* enacted the Assailed Ordinance which requires heavy industries operating along the portions of Batangas Bay within the territorial jurisdiction of Batangas City to construct desalination plants to facilitate the use of seawater as coolant for their industrial facilities.^[15] The pertinent portions of the Assailed Ordinance state:

SECTION 3. - MANDATORY REQUIREMENT FOR THE APPROVAL OF HEAVY INDUSTRIES ALONG THE BATANGAS CITY PORTION OF BATANGAS BAY AND OTHER AREAS. - In addition to the requirements provided by laws and ordinances, the City Government shall not grant permit or clearance or its approval for any project or program involving the construction or establishment of heavy industries along the Batangas City portion of the Batangas Bay and other areas delineated as Heavy Industrial Zone without the required DESALINATION PLANT for use of sea water instead of underground fresh water for cooling system and industrial purposes.

SECTION 4. - GRACE PERIOD PROVIDED FOR HEAVY INDUSTRIES. - All heavy industries already established or approved by the City Government prior to the enactment of this Ordinance, including those to be established, are granted a period of five (5) years, counted from the date of approval of this Ordinance, to install [a] desalination plant.

SECTION 5. - AUTHORITY TO GRANT EXEMPTION FROM THE CONSTRUCTION OF DESALINATION PLANT. - The City Mayor with the concurrence of the Sangguniang Panlungsod may grant exemption for a given period to an industry from installation or construction of DESALINATION PLANT on the basis of the following conditions:

5.1.The exemption will not adversely affect the environment, public health, public safety and the welfare of the people, more particularly, the local aquifers, as shown by a comprehensive ground water assessment or comprehensive hydrological study conducted by the industry and presented by the industry applying for exemption.

5.2.The industry or proposed project will support economic-based activities and provide livelihood, employment, vital community services and facilities while at the same time posing no adverse effect on the community.

5.3.A public hearing is conducted.

5.4.Such other reasonable conditions which the City Mayor may

require with the concurrence of the Sangguniang Panlungsod.

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SECTION 7. PENAL CLAUSE. - Any person who shall authorize the start of the construction, development or operation of any project considered as heavy industry without the approval of the government authorities herein mentioned shall suffer an imprisonment of not less than six (6) months nor more than one (1) year and a fine of P5,000.00.

If the violator is a juridical person or association, the penalty shall be imposed upon the owner, President, project manager and/or persons directly in charge of the construction, development and operation of the project.

SECTION 8. POWER OF THE CITY MAYOR TO ISSUE A CEASE AND DESIST ORDER. - The City Mayor, upon knowledge of the violation of this ordinance shall issue a cease and desist order for the stoppage of the construction, development or operation of the project or industry and shall exercise all powers necessary to give effect to the said order.

SECTION 9. ADMINISTRATIVE FINE. - An administrative fine/penalty of P5,000.00 per day of violation of this ordinance shall be imposed upon the owner, President, project manager, and/or persons directly in charge of the construction, development and operation of the project or industry.

[16]

The Assailed Ordinance was approved by the city mayor on June 7, 2001.

Heavy industries subject of the Assailed Ordinance had until May 28, 2006 to comply with its provisions.^[17] Among the facilities affected by the Assailed Ordinance is PSPC's Tabangao Refinery.

Proceedings before the RTC

On May 23, 2006, PSPC filed against Batangas City and the *Sangguniang Panlungsod* a Petition for Declaration of Nullity (PSPC Petition) before the RTC praying that the Assailed Ordinance be declared null and void. The PSPC Petition was raffled to Branch 84, and docketed as SP Civil Case No. 7924.^[18] Thereafter, SPEX filed a petition-in-intervention (Intervention) praying for the same relief.^[19]

JG Summit Petrochemical Corporation (JG Summit) and First Gas Power Corporation (First Gas) filed similar petitions docketed as SP Civil Case Nos. 7925 (JG Summit Petition) and 7926 (First Gas Petition), respectively.^[20] These petitions were likewise raffled to Branch 84, and consolidated with the PSPC Petition for joint trial.

[21]

For its part, PSPC averred that the Assailed Ordinance constitutes an invalid exercise of police power as it failed to meet the substantive requirements for validity.^[22] Particularly, PSPC argued that the Assailed Ordinance contravenes the Water Code of the Philippines (Water Code), and encroaches upon the power of the National Water

Resources Board (NWRB) to regulate and control the Philippines' water resources.^[23] In addition, Batangas City and the *Sangguniang Panlungsod* failed to sufficiently show the factual or technical basis for its enactment.^[24] In this connection, PSPC alleged that the Assailed Ordinance unduly singles out heavy industries, and holds them solely accountable for the loss of water and destruction of aquifers without basis, resulting in the deprivation of their property rights without due process of law.^[25]

On the procedural aspect, PSPC contended that the Assailed Ordinance was not posted or published in a newspaper of general circulation in the province, nor were public hearings or consultations involving concerned parties conducted thereon.^[26] Further, there are no records showing that the Assailed Ordinance, as approved by the *Sangguniang Panlungsod*, was forwarded to the *Sangguniang Panlalawigan* of the Province of Batangas after it was approved by the city mayor, as required by Section 56 of the Local Government Code (LGC).^[27]

SPEX essentially adopted the allegations of PSPC and prayed for the same relief, asserting that it possesses material and direct interest in the subject matter of the PSPC Petition.^[28]

In response, Batangas City and the *Sangguniang Panlungsod* maintained that they have the power to enact the Assailed Ordinance pursuant to the general welfare clause under the LGC.^[29] According to them, the rationale of the Assailed Ordinance is to stop PSPC and other industries similarly situated from relying "too much" on ground water as coolants for their machineries, and alternatively promote the use of seawater for such purpose, considering that fresh ground water is a "perishable commodity."^[30] Further, Batangas City and the *Sangguniang Panlungsod* countered that the "regulation or prohibition" on the use of ground water is merely incidental to the main purpose of the Assailed Ordinance, which is to compel heavy industries such as PSPC to construct desalination plants. Hence, provisions having regulatory and prohibitive effect may be taken out of the Assailed Ordinance without entirely impairing its validity.^[31]

Further, Batangas City and the *Sangguniang Panlungsod* took exception to PSPC's allegations and asserted that the Assailed Ordinance had been published in *Dyaryo Veritas*, a newspaper of general circulation in the area. Moreover, Batangas City and the *Sangguniang Panlungsod* claimed that a joint public hearing on the Assailed Ordinance had in fact been conducted by the *Sangguniang Panlungsod* and *Sangguniang Panlalawigan*, where PSPC was duly represented.^[32] In addition, Batangas City and the *Sangguniang Panlungsod* argued that the requirement of referral of ordinances to the *Sangguniang Panlalawigan* applies only to tax and other revenue measures.^[33]

Finally, Batangas City and the *Sangguniang Panlungsod* averred that since PSPC and SPEX, along with other concerned heavy industries, essentially question the former's authority to regulate and prohibit the use of fresh ground water, they should have first referred their grievances to NWRB by filing a complaint for adjudication on the threatened revocation of their existing water permits.^[34]

On June 21, 2007, the RTC resolved the First Gas Petition by issuing a Decision

declaring the Assailed Ordinance null and void.^[35]

Subsequently, on June 29, 2007 the RTC rendered a Decision,^[36] this time resolving the PSPC and JG Summit petitions. The dispositive portion of said Decision reads:

It is evident that from foregoing factual milieu and parameters, the questioned ordinance is INVALID, as it is hereby declared INVALID, in its entirety for want of necessity and for not conducting prior public hearing, and for violating the due process clause of the Constitution with respect to its (sic) Sec. 8, City Ordinance No.3, [s]. 2001.

No pronouncement as to costs.

SO ORDERED.^[37]

The RTC gave credence to the testimony of PSPC's witness Engineer Joeffrey Caranto (Engineer Caranto) who conducted a hydrogeology study on the Tabangao-Malitam watershed from which PSPC sources fresh ground water.^[38] The RTC summarized the findings of said study in this wise:

1. A water balance x x x calculation of the Tabangao-Malitam groundwater system shows that the natural recharge (replenishment) rate far exceeds the current demand for water in the area. Hence, **there is no threat of depletion of the groundwater resource[s] in the Tabangao-Malitam [w]atershed that purportedly may result from PSPC's deep well pumping.**
2. **Water levels in the PSPC wells have not lowered significantly over the last three (3) decades, indicating that there is no substantial diminution of the supply of groundwater.**
3. Among the four PSPC wells, only one [1] well shows very slightly elevated levels of chloride at 300 milligrams per liter which however is very low compared to seawater (which measures 20,000 milligrams of chloride per liter). The chloride levels in the other nearby PSPC wells are all within drinking water standards and have not increased in the last four (4) decades of usage. **This indicates that salt water intrusion is not occurring in the PSPC wells.**

^[39] (Emphasis supplied)

The RTC also noted that the *Sangguniang Panlungsod* failed to consult the NWRB before enacting the Assailed Ordinance, thereby encroaching upon its authority.^[40]

Anent Section 8, the RTC concluded that the power granted to the city mayor to cause the issuance of cease and desist orders against the use of ground water without prior notice and hearing constitutes a violation of the due process clause.^[41]

Proceedings before the CA

Batangas City and the *Sangguniang Panlungsod* filed separate notices of appeal