

SECOND DIVISION

[G.R. No. 182944, November 09, 2016]

**DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH),
REPRESENTED BY SEC. HERMOGENES E. EBDANE, JR, AND
METROPOLITAN MANILA DEVELOPMENT AUTHORITY,
REPRESENTED BY CHAIRMAN BAYANI F. FERNANDO,
PETITIONERS, VS. CITY ADVERTISING VENTURES
CORPORATION, REPRESENTED BY DEXTER Y. LIM, RESPONDENT.**

DECISION

LEONEN, J.:

For a writ of preliminary injunction to be issued, the applicant must show, by prima facie evidence, an existing right before trial, a material and substantial invasion of this right, and that a writ of preliminary injunction is necessary to prevent irreparable injury.

This resolves a Petition for Review on Certiorari^[1] praying that the assailed December 3, 2007^[2] and May 14, 2008^[3] Resolutions of the Court of Appeals in CA G.R. SP No. 101420 be set aside; and that Branch 66 of the Regional Trial Court of Makati City be prohibited from conducting further proceedings in Civil Case No. 06-899.^[4] The Petition also prays that the Regional Trial Court be ordered to dismiss Civil Case No. 06-899.^[5]

The Court of Appeals' December 3, 2007 Resolution denied petitioners Department of Public Works and Highways and the Metropolitan Manila Development Authority's Petition for Certiorari and Prohibition,^[6] which sought to annul the Regional Trial Court's November 21, 2006^[7] and April 11, 2007^[8] Orders in Civil Case No. 06-899. The Court of Appeals' May 14, 2008 Resolution denied the Motion for Reconsideration of the Department of Public Works and Highways and the Metropolitan Manila Development Authority.^[9]

The Regional Trial Court's November 21, 2006 Order granted City Advertising Ventures Corporation's prayer for the issuance of a writ of preliminary injunction in its Complaint for "Violation of [Administrative Order No.] 160, Tort, [and] Injunction,"^[10] which was docketed as Civil Case No. 06-899. The April 11, 2007 Order of the Regional Trial Court denied the Department of Public Works and Highways and the Metropolitan Manila Development Authority's Omnibus Motion,^[11] which sought reconsideration of its November 21, 2006 Order.

Respondent City Advertising Ventures Corporation is a company engaged in the advertising business, such as putting up banners and signages within Metro Manila.
^[12]

On December 28, 2005, City Advertising Ventures Corporation entered into a lease agreement with the MERALCO Financing Services Corporation^[13] for the use of 5,000 of Manila Electric Company's (MERALCO) lampposts to display advertising banners.^[14] Under this contract, City Advertising Ventures Corporation obtained sign permits from Quezon City's Department of Engineering, Office of the Building Official, Signboard Permit Section.^[15] It obtained similar permits for the cities of Pasay and Makati.^[16] City Advertising Ventures Corporation likewise obtained permits for setting up pedestrian overpass banners in Quezon City.^[17]

When Typhoon Milenyo hit in September 2006, several billboards in Metro Manila were blown by strong winds and fell. In its wake, Former President Gloria Macapagal-Arroyo, through Executive Secretary Eduardo R. Ermita, issued Administrative Order No. 160^[18] dated October 4, 2006 "[d]irecting the Department of Public Works and Highways to conduct field investigations, evaluations and assessments of all billboards and determine those that are hazardous and pose imminent danger to life, health, safety and property of the general public and to abate and dismantle the same."^[19] Six (6) days later, on October 10, 2006, Administrative Order No. 160-A^[20] was issued, supplementing Administrative Order No. 160 and "[s]pecifying the legal grounds and procedures for the prohibition and abatement of billboards and signboards constituting public nuisance or other violations of law."^[21]

Section 1 of Administrative Order No. 160 laid out instructions to the Department of Public Works and Highways, as follows:

SECTION 1. Tasks of the DPWH. The DPWH is hereby tasked to:

1.1. Conduct field inspection and determine (a) billboards posing imminent danger or threat to the life, health, safety and property of the public; (b) billboards violating applicable laws, rules and regulations; (c) billboards constructed within the easement of road right-of-way; and (d) billboards constructed without the necessary permit. Priority shall be given to billboards located along major roads in Metro Manila and other cities and other national highways and major thoroughfares, as determined by DPWH;

1.2. Upon evaluation and assessment, issue a certification as to those billboards found to be hazardous and violative of existing standards prescribed by the National Building Code, Structural Code of the Philippines and other related legal issuances furnishing copy [sic] of the certification to the LGUs concerned which have jurisdiction over the location of the billboards;

1.3. Abate and dismantle those billboards, commercial or non-commercial, constructed on private or public properties found to be falling under any and all grounds enumerated in paragraph 1.1. above;

1.4. Submit a detailed written report to the Department of Justice (DOJ) to serve as basis for the possible filing of appropriate civil or criminal

cases;

1.5. Call upon the Philippine National Police (PNP) to provide assistance in the dismantling of billboards and other off-site signs declared as covered under paragraph 1.1. above.^[22]

Section 2 of Administrative Order No. 160 provided that the Department of Public Works and Highways shall be assisted by the Metro Manila Development Authority and by local government units:

SECTION 2. Assistance by MMDA and LGUs. The Metropolitan Manila Development Authority (MMDA) and/or the concerned LGUs are hereby directed to give full support and assistance to the DPWH for the immediate inspection, assessment and abatement of billboards found to be hazardous and violative of the National Building Code, Structural Code of the Philippines and other related issuances.^[23]

Proceeding from Articles 694,^[24] 695,^[25] and 699^[26] of the Civil Code, Administrative Order No. 160-A identified the remedies available to the Department of Public Works and Highways:

SECTION 4. Remedies Against Public Nuisance. Pursuant to Article 699 of the Civil Code, in relation to AO No. 160, dated October 4, 2006, the Department of Public Works and Highways (DPWH), through its Secretary, with the help of the Metropolitan Manila Development Authority (MMDA), and the various local government units (LGUs), through the local Building Officials, shall take care that one or all of the following remedies against public nuisances are availed of:

- (a) A prosecution under the Revised Penal Code or any local ordinance; or
- (b) A civil action; or
- (c) Abatement, without judicial proceedings, if the local Building Official determines that this is the best remedy under the circumstances.^[27]

On October 6, 2006, the Department of Public Works and Highways announced that they would start dismantling billboards.^[28] During its operations, it was able to remove 250 of City Advertising Ventures Corporation's lamppost banners and frames, 12 pedestrian overpass banners, 17 pedestrian overpass frames, and 36 halogen lamps.^[29]

City Advertising Ventures Corporation then filed before the Regional Trial Court of Makati City its Complaint for "Violation of [Administrative Order No.] 160, Tort,

[and] Injunction with Prayer for [Temporary Restraining Order], Preliminary Injunction, and Preliminary Mandatory Injunction"^[30] dated October 18, 2006.

Asserting that Administrative Order No. 160 pertained specifically to "billboards" (i.e., "large panel[s] that carr[y] outdoor advertising") and not to small advertising fixtures such as its signages and banners, City Advertising Ventures Corporation claimed that the Department of Public Works and Highways exceeded its authority when it dismantled its banners and other fixtures.^[31] It also claimed that the Department of Public Works and Highways "seriously impeded the pursuit of [its] legitimate business and ... unlawfully deprived [it] of property, income and income opportunities ... without due process of law,"^[32] violated Articles 19,^[33] 20,^[34] 21^[35] and 32(2), (6), and (8)^[36] of the Civil Code, and impaired contractual obligations.^[37]

After conducting summary hearings on October 25 and 30, 2006, Branch 66 of the Regional Trial Court of Makati City issued the Order^[38] dated October 31, 2006 granting City Advertising Ventures Corporation's prayer for a temporary restraining order. This Order stated:

Such being the case, the Court is left with no recourse but to GRANT the Temporary Restraining Order from [sic] a period of twenty (20) days from today.

ACCORDINGLY, the defendants are hereby restrained from further removing, dismantling, and confiscating any of plaintiff's lamppost and pedestrian overpass banners.

In the meantime, let the hearing on the plaintiff's application for Writ of Preliminary Injunction [be set] on November 8, 2006 at 2:00 p.m.

Let a copy of this order be served upon the defendants at the expense of the plaintiff through the Process Server of this Court.

SO ORDERED.^[39]

In the Order^[40] dated November 21, 2006, the Regional Trial Court granted City Advertising Ventures Corporation's prayer for the issuance of a writ of preliminary injunction:

Wherefore, plaintiff's prayer for the issuance of a writ or preliminary injunction is granted. Accordingly, let a writ of injunction issue upon the filing by the plaintiff of a bond in the amount of PESOS ONE HUNDRED THOUSAND (P100,000.00) executed to the defendants to the effect that the plaintiff will pay all damages defendants may suffer by reason of this injunction should the Court finally decide that the plaintiff is not entitled thereto. The defendants, their agents and representatives are hereby ordered to cease and desist from further removing, dismantling and

confiscating any of plaintiff's lamppost and pedestrian overpass banners.

Let the hearing on the main case be set on January 23, 2006 [sic] at 8:30 in the morning.

SO ORDERED.^[41]

In response, the Department of Public Works and Highways and the Metropolitan Manila Development Authority filed an Omnibus Motion for Reconsideration and Clarification of the November 21, 2006 Order and for the Dissolution of the Writ of Preliminary Injunction.^[42] They asserted that City Advertising Ventures Corporation failed to show a clear legal right worthy of protection and that it did not stand to suffer grave and irreparable injury.^[43] They likewise asserted that the Regional Trial Court exceeded its authority in issuing a writ of preliminary injunction.^[44]

In the Order^[45] dated April 11, 2007, the Regional Trial Court denied the Omnibus Motion.

Thereafter, the Department of Public Works and Highways and the Metropolitan Manila Department Authority filed before the Court of Appeals a Petition for Certiorari and Prohibition.^[46] In its assailed December 3, 2007 Resolution,^[47] the Court of Appeals denied the Petition. In its assailed May 14, 2008 Resolution,^[48] the Court of Appeals denied the Motion for Reconsideration.

Hence, this Petition^[49] was filed.

On November 3, 2008, respondent City Advertising Ventures Corporation filed its Comment.^[50] On April 14, 2009, petitioners filed their Reply.^[51]

In the Resolution^[52] dated July 7, 2010, this Court issued a temporary restraining order enjoining the implementation of the Regional Trial Court's November 21, 2006 and April 11, 2007 Orders, as well as of a subsequent May 21, 2010 Order, which reiterated the trial court's November 21, 2006 and April 11, 2007 Orders.

For resolution is the sole issue of whether the Regional Trial Court gravely abused its discretion in issuing its November 21, 2006 and April 11, 2007 Orders.

I

After seeking relief from the Court of Appeals through the remedy of a petition for certiorari and prohibition under Rule 65 of the 1997 Rules of Civil Procedure, petitioners come to this Court through a petition for review on certiorari under Rule 45. The distinctions between Rule 65 and Rule 45 petitions have long been settled. A Rule 65 petition is an original action, independent of the action from which the assailed ruling arose. A Rule 45 petition, on the other hand, is a mode of appeal. As such, it is a continuation of the case subject of the appeal. In *Sy v. Commission on Settlement of Land Problems*:^[53]