

## SECOND DIVISION

[ G.R. No. 180206, February 04, 2009 ]

**THE CITY GOVERNMENT OF BAGUIO CITY, REPRESENTED BY REINALDO BAUTISTA, JR., CITY MAYOR; THE ANTI-SQUATTING COMMITTEE, REPRESENTED BY ATTY. MELCHOR CARLOS R. RAGANES, CITY BUILDINGS AND ARCHITECTURE OFFICE, REPRESENTED BY OSCAR FLORES; AND PUBLIC ORDER AND SAFETY OFFICE, REPRESENTED BY EMMANUEL REYES, PETITIONERS. VS. ATTY. BRAIN MASWENG, REGIONAL OFFICER-NATIONAL COMMISSION ON INDIGENOUS PEOPLE-CAR, ELVIN GUMANGAN, NARCISO BASATAN AND LAZARO BAWAS, RESPONDENTS.**

### DECISION

**TINGA, J.:**

Petitioners, the City Government of Baguio City, represented by its Mayor, Reinaldo Bautista, Jr., the Anti-Squatting Committee, represented by Atty. Melchor Carlos R. Rabanes; the City Buildings and Architecture Office, represented by Oscar Flores; and the Public Order and Safety Office, represented by Emmanuel Reyes and later substituted by Gregorio Deligero, assail the Decision<sup>[1]</sup> of the Court of Appeals in CA G.R. SP No. 96895, dated April 16, 2007, and its Resolution<sup>[2]</sup> dated September 11, 2007, which affirmed the injunctive writ issued by the National Commission on Indigenous Peoples (NCIP) against the demolition orders of petitioners.

The following undisputed facts are culled from the assailed Decision:

The case stemmed from the three (3) Demolition Orders issued by the City Mayor of Baguio City, Braulio D. Yaranon, ordering the demolition of the illegal structures constructed by Lazaro Bawas, Alexander Ampaguey, Sr. and a certain Mr. Basatan on a portion of the Busol Watershed Reservation located at Aurora Hill, Baguio City, without the required building permits and in violation of Section 69 of Presidential Decree No. 705, as amended, Presidential Decree No. 1096 and Republic Act No. 7279.

Pursuant thereto, the corresponding demolition advices dated September 19, 2006 were issued informing the occupants thereon of the intended demolition of the erected structures on October 17 to 20, 2006. Consequently, Elvin Gumangan, Narciso Basatan and Lazaro Bawas (hereinafter private respondents) filed a petition for injunction with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction against the Office of the City Mayor of Baguio City through its Acting City Mayor, Reynaldo Bautista, the City Building and Architecture Office, the Anti-Squatting Task Force, and the Public Order

and Safety Division, among others, (collectively called petitioners) before the National Commission on Indigenous Peoples, Cordillera Administrative Region (NCIP-CAR), Regional Hearing Office, La Trinidad, Benguet, docketed as Case No. 31-CAR-06.

In their petition, private respondents basically claimed that the lands where their residential houses stand are their ancestral lands which they have been occupying and possessing openly and continuously since time immemorial; that their ownership thereof have been expressly recognized in Proclamation No. 15 dated April 27, 1922 and recommended by the Department of Environment and Natural Resources (DENR) for exclusion from the coverage of the Busol Forest Reserve. They, thus, contended that the demolition of their residential houses is a violation of their right of possession and ownership of ancestral lands accorded by the Constitution and the law, perforce, must be restrained.

On October 16 and 19, 2006, Regional Hearing Officer Atty. Brain S. Masweng of the NCIP issued the two (2) assailed temporary restraining orders (TRO) directing the petitioners and all persons acting for and in their behalf to refrain from enforcing Demolition Advice dated September 18, 2006; Demolition Order dated September 19, 2006; Demolition Order No. 25, Series of 2004; Demolition Order No. 33, Series of 2005; and Demolition Order No. 28, Series of 2004, for a total period of twenty (20) days.

Subsequently, the NCIP issued the other assailed Resolution dated November 10, 2006 granting the private respondents' application for preliminary injunction subject to the posting of an injunctive bond each in the amount of P10,000.00.<sup>[3]</sup>

Acting on the petition for certiorari filed by petitioners,<sup>[4]</sup> the Court of Appeals upheld the jurisdiction of the NCIP over the action filed by private respondents and affirmed the temporary restraining orders dated October 16<sup>[5]</sup> and 19, 2006,<sup>[6]</sup> and the Resolution dated November 10, 2006,<sup>[7]</sup> granting the application for a writ of preliminary injunction, issued by the NCIP. The appellate court also ruled that Baguio City is not exempt from the coverage of Republic Act No. 8371, otherwise known as the Indigenous Peoples Rights Act of 1997 (IPRA).

Petitioners assert that the NCIP has no jurisdiction to hear and decide main actions for injunction such as the one filed by private respondents. They claim that the NCIP has the authority to issue temporary restraining orders and writs of preliminary injunction only as auxiliary remedies to cases pending before it.

Further, the IPRA provides that Baguio City shall be governed by its Charter. Thus, private respondents cannot claim their alleged ancestral lands under the provisions of the IPRA.

Petitioners contend that private respondents are not entitled to the protection of an injunctive writ because they encroached upon the Busol Forest Reservation and built structures thereon without the requisite permit. Moreover, this Court, in *Heirs of Gumangan v. Court of Appeals*,<sup>[8]</sup> had already declared that the Busol Forest

Reservation is inalienable and possession thereof, no matter how long, cannot convert the same into private property. Even assuming that private respondents have a pending application for ancestral land claim, their right is at best contingent and cannot come under the protective mantle of injunction.

Petitioners also claim that the Busol Forest Reservation is exempt from ancestral claims as it is needed for public welfare. It is allegedly one of the few remaining forests in Baguio City and is the city's main watershed.

Finally, petitioners contend that the demolition orders were issued pursuant to the police power of the local government.

In their Comment<sup>[9]</sup> dated March 1, 2007, private respondents defend the jurisdiction of the NCIP to take cognizance of and decide main actions for injunction arguing that the IPRA does not state that the NCIP may only issue such writs of injunction as auxiliary remedies. Private respondents also contend that the IPRA does not exempt Baguio City from its coverage nor does it state that there are no ancestral lands in Baguio City.

As members of the Ibaloi Indigenous Community native to Baguio City, private respondents are treated as squatters despite the fact that they hold native title to their ancestral land. The IPRA allegedly now recognizes ancestral lands held by native title as never to have been public lands.

Private respondents aver that the Busol Forest Reservation is subject to ancestral land claims. In fact, Proclamation No. 15<sup>[10]</sup> dated April 27, 1922, which declared the area a forest reserve, allegedly did not nullify the vested rights of private respondents over their ancestral lands and even identified the claimants of the particular portions within the forest reserve. This claim of ownership is an exception to the government's contention that the whole area is a forest reservation.

Lastly, private respondents assert that the power of the city mayor to order the demolition of certain structures is not absolute. Regard should be taken of the fact that private respondents cannot be issued building permits precisely because they do not have paper titles over their ancestral lands, a requirement for the issuance of a building permit under the National Building Code.

Petitioners' Reply to Comment<sup>[11]</sup> dated June 11, 2008 merely reiterates their previous arguments.

We shall first dispose of the elemental issue of the NCIP's jurisdiction.

The NCIP is the primary government agency responsible for the formulation and implementation of policies, plans and programs to protect and promote the rights and well-being of indigenous cultural communities/indigenous peoples (ICCs/IPs) and the recognition of their ancestral domains as well as their rights thereto.<sup>[12]</sup> In order to fully effectuate its mandate, the NCIP is vested with jurisdiction over all claims and disputes involving the rights of ICCs/IPs. The only condition precedent to the NCIP's assumption of jurisdiction over such disputes is that the parties thereto shall have exhausted all remedies provided under their customary laws and have obtained a certification from the Council of Elders/Leaders who participated in the

attempt to settle the dispute that the same has not been resolved.<sup>[13]</sup>

In addition, NCIP Administrative Circular No. 1-03 dated April 9, 2003, known as the Rules on Pleadings, Practice and Procedure Before the NCIP, reiterates the jurisdiction of the NCIP over claims and disputes involving ancestral lands and enumerates the actions that may be brought before the commission. Sec. 5, Rule III thereof provides:

Sec. 5. *Jurisdiction of the NCIP.*--The NCIP through its Regional Hearing Offices shall exercise jurisdiction over all claims and disputes involving rights of ICCs/IPs and all cases pertaining to the implementation, enforcement, and interpretation of R.A. 8371, including but not limited to the following:

(1) *Original and Exclusive Jurisdiction of the Regional Hearing Office (RHO):*

- a. Cases involving disputes and controversies over ancestral lands/domains of ICCs/IPs;
- b. Cases involving violations of the requirement of free and prior and informed consent of ICCs/IPs;
- c. Actions for enforcement of decisions of ICCs/IPs involving violations of customary laws or desecration of ceremonial sites, sacred places, or rituals;
- d. Actions for redemption/reconveyance under Section 8(b) of R.A. 8371; and
- e. Such other cases analogous to the foregoing.

(2) *Original Jurisdiction of the Regional Hearing Officer:*

- a. Cases affecting property rights, claims of ownership, hereditary succession, and settlement of land disputes, between and among ICCs/IPs that have not been settled under customary laws; and
- b. Actions for damages arising out of any violation of Republic Act No. 8371.

(3) *Exclusive and Original Jurisdiction of the Commission:*

- a. Petition for cancellation of Certificate of Ancestral Domain Titles/Certificate of Ancestral Land Titles (CADTs/CALTs) alleged to have been fraudulently acquired by, and issued to, any person or community as provided for under Section 54 of R.A. 8371. Provided that such action is filed within one (1) year from the date of registration.

In order to determine whether the NCIP has jurisdiction over the dispute in accordance with the foregoing provisions, it is necessary to resolve, on the basis of the allegations in their petition, whether private respondents are members of ICCs/IPs. In their petition<sup>[14]</sup> filed before the NCIP, private respondents, members of the Ibaloi tribe who first settled in Baguio City, were asserting ownership of portions of the Busol Forest Reservation which they claim to be their ancestral lands. Correctly denominated as a petition for injunction as it sought to prevent the