

## FIRST DIVISION

[ G.R. No. 156052, February 13, 2008 ]

**SOCIAL JUSTICE SOCIETY (SJS), VLADIMIR ALARIQUE T. CABIGAO and BONIFACIO S. TUMBOKON, Petitioners, vs. HON. JOSE L. ATIENZA, JR., in his capacity as Mayor of the City of Manila, Respondent.**

**CHEVRON PHILIPPINES INC., PETRON CORPORATION and PILIPINAS SHELL PETROLEUM CORPORATION, Movants-Intervenors.**

**DEPARTMENT OF ENERGY, Movant-Intervenor.**

### R E S O L U T I O N

#### **CORONA, J.:**

After we promulgated our decision in this case on March 7, 2007, Chevron Philippines Inc. (Chevron), Petron Corporation (Petron) and Pilipinas Shell Petroleum Corporation (Shell) (collectively, the oil companies) and the Republic of the Philippines, represented by the Department of Energy (DOE), filed their respective motions for leave to intervene and for reconsideration of the decision.

Chevron<sup>[1]</sup> is engaged in the business of importing, distributing and marketing of petroleum products in the Philippines while Shell and Petron are engaged in the business of manufacturing, refining and likewise importing, distributing and marketing of petroleum products in the Philippines.<sup>[2]</sup> The DOE is a governmental agency created under Republic Act (RA) No. 7638<sup>[3]</sup> and tasked to prepare, integrate, coordinate, supervise and control all plans, programs, projects and activities of the government relative to energy exploration, development, utilization, distribution and conservation.<sup>[4]</sup>

The facts are restated briefly as follows:

Petitioners Social Justice Society, Vladimir Alarique T. Cabigao and Bonifacio S. Tumbokon, in an original petition for *mandamus* under Rule 65 of the Rules of Court, sought to compel respondent Hon. Jose L. Atienza, Jr., then mayor of the City of Manila, to enforce Ordinance No. 8027. This ordinance was enacted by the *Sangguniang Panlungsod* of Manila on November 20, 2001,<sup>[5]</sup> approved by respondent Mayor on November 28, 2001,<sup>[6]</sup> and became effective on December 28, 2001 after publication.<sup>[7]</sup> Sections 1 and 3 thereof state:

SECTION 1. For the purpose of promoting sound urban planning and ensuring health, public safety, and general welfare of the residents of Pandacan and Sta. Ana as well as its adjoining areas, the land use of

[those] portions of land bounded by the Pasig River in the north, PNR Railroad Track in the east, Beata St. in the south, Palumpong St. in the southwest, and Estero de Pandacan in the west[,] PNR Railroad in the northwest area, Estero de Pandacan in the [n]ortheast, Pasig River in the southeast and Dr. M.L. Carreon in the southwest. The area of Punta, Sta. Ana bounded by the Pasig River, Marcelino Obrero St., Mayo 28 St., and F. Manalo Street, are hereby reclassified from Industrial II to Commercial I.

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SEC. 3. Owners or operators of industries and other businesses, the operation of which are no longer permitted under Section 1 hereof, are hereby given a period of six (6) months from the date of effectivity of this Ordinance within which to cease and desist from the operation of businesses which are hereby in consequence, disallowed.

Ordinance No. 8027 reclassified the area described therein from industrial to commercial and directed the owners and operators of businesses disallowed under the reclassification to cease and desist from operating their businesses within six months from the date of effectivity of the ordinance. Among the businesses situated in the area are the so-called "Pandacan Terminals" of the oil companies.

On June 26, 2002, the City of Manila and the Department of Energy (DOE) entered into a memorandum of understanding (MOU)<sup>[8]</sup> with the oil companies. They agreed that "the scaling down of the Pandacan Terminals [was] the most viable and practicable option." The *Sangguniang Panlungsod* ratified the MOU in Resolution No. 97.<sup>[9]</sup> In the same resolution, the *Sanggunian* declared that the MOU was effective only for a period of six months starting July 25, 2002.<sup>[10]</sup> Thereafter, on January 30, 2003, the *Sanggunian* adopted Resolution No. 13<sup>[11]</sup> extending the validity of Resolution No. 97 to April 30, 2003 and authorizing the mayor of Manila to issue special business permits to the oil companies.<sup>[12]</sup>

This was the factual backdrop presented to the Court which became the basis of our March 7, 2007 decision. We ruled that respondent had the ministerial duty under the Local Government Code (LGC) to "enforce all laws and ordinances relative to the governance of the city,"<sup>[13]</sup> including Ordinance No. 8027. We also held that we need not resolve the issue of whether the MOU entered into by respondent with the oil companies and the subsequent resolutions passed by the *Sanggunian* could amend or repeal Ordinance No. 8027 since the resolutions which ratified the MOU and made it binding on the City of Manila expressly gave it full force and effect only until April 30, 2003. We concluded that there was nothing that legally hindered respondent from enforcing Ordinance No. 8027.

After we rendered our decision on March 7, 2007, the oil companies and DOE sought to intervene and filed motions for reconsideration in intervention on March 12, 2007 and March 21, 2007 respectively. On April 11, 2007, we conducted the oral arguments in Baguio City to hear petitioners, respondent and movants-intervenors oil companies and DOE.

The oil companies called our attention to the fact that on April 25, 2003, Chevron had filed a complaint against respondent and the City of Manila in the Regional Trial

Court (RTC) of Manila, Branch 39, for the annulment of Ordinance No. 8027 with application for writs of preliminary prohibitory injunction and preliminary mandatory injunction.<sup>[14]</sup> The case was docketed as civil case no. 03-106377. On the same day, Shell filed a petition for prohibition and *mandamus* likewise assailing the validity of Ordinance No. 8027 and with application for writs of preliminary prohibitory injunction and preliminary mandatory injunction.<sup>[15]</sup> This was docketed as civil case no. 03-106380. Later on, these two cases were consolidated and the RTC of Manila, Branch 39 issued an order dated May 19, 2003 granting the applications for writs of preliminary prohibitory injunction and preliminary mandatory injunction:

WHEREFORE, upon the filing of a total bond of TWO MILLION (Php 2,000,000.00) PESOS, let a Writ of Preliminary Prohibitory Injunction be issued ordering [respondent] and the City of Manila, their officers, agents, representatives, successors, and any other persons assisting or acting in their behalf, during the pendency of the case, to REFRAIN from taking steps to enforce Ordinance No. 8027, and let a Writ of Preliminary Mandatory Injunction be issued ordering [respondent] to issue [Chevron and Shell] the necessary Business Permits to operate at the Pandacan Terminal.<sup>[16]</sup>

Petron likewise filed its own petition in the RTC of Manila, Branch 42, also attacking the validity of Ordinance No. 8027 with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order (TRO). This was docketed as civil case no. 03-106379. In an order dated August 4, 2004, the RTC enjoined the parties to maintain the status quo.<sup>[17]</sup>

Thereafter, in 2006, the city council of Manila enacted Ordinance No. 8119, also known as the Manila Comprehensive Land Use Plan and Zoning Ordinance of 2006.<sup>[18]</sup> This was approved by respondent on June 16, 2006.<sup>[19]</sup>

Aggrieved anew, Chevron and Shell filed a complaint in the RTC of Manila, Branch 20, asking for the nullification of Ordinance No. 8119.<sup>[20]</sup> This was docketed as civil case no. 06-115334. Petron filed its own complaint on the same causes of action in the RTC of Manila, Branch 41.<sup>[21]</sup> This was docketed as civil case no. 07-116700.<sup>[22]</sup> The court issued a TRO in favor of Petron, enjoining the City of Manila and respondent from enforcing Ordinance No. 8119.<sup>[23]</sup>

Meanwhile, in civil case no. 03-106379, the parties filed a joint motion to withdraw complaint and counterclaim on February 20, 2007.<sup>[24]</sup> In an order dated April 23, 2007, the joint motion was granted and all the claims and counterclaims of the parties were withdrawn.<sup>[25]</sup>

Given these additional pieces of information, the following were submitted as issues for our resolution:

1. whether movants-intervenors should be allowed to intervene in this case;<sup>[26]</sup>

2. whether the following are impediments to the execution of our March 7, 2007 decision:
  - (a) Ordinance No. 8119, the enactment and existence of which were not previously brought by the parties to the attention of the Court and
  - (b) writs of preliminary prohibitory injunction and preliminary mandatory injunction and status quo order issued by the RTC of Manila, Branches 39 and 42 and
3. whether the implementation of Ordinance No. 8027 will unduly encroach upon the DOE's powers and functions involving energy resources.

During the oral arguments, the parties submitted to this Court's power to rule on the constitutionality and validity of Ordinance No. 8027 despite the pendency of consolidated cases involving this issue in the RTC.<sup>[27]</sup> The importance of settling this controversy as fully and as expeditiously as possible was emphasized, considering its impact on public interest. Thus, we will also dispose of this issue here. The parties were after all given ample opportunity to present and argue their respective positions. By so doing, we will do away with the delays concomitant with litigation and completely adjudicate an issue which will most likely reach us anyway as the final arbiter of all legal disputes.

Before we resolve these issues, a brief review of the history of the Pandacan Terminals is called for to put our discussion in the proper context.

### **HISTORY OF THE PANDACAN OIL TERMINALS**

Pandacan (one of the districts of the City of Manila) is situated along the banks of the Pasig river. At the turn of the twentieth century, Pandacan was unofficially designated as the industrial center of Manila. The area, then largely uninhabited, was ideal for various emerging industries as the nearby river facilitated the transportation of goods and products. In the 1920s, it was classified as an industrial zone.<sup>[28]</sup> Among its early industrial settlers were the oil companies. Shell established its installation there on January 30, 1914.<sup>[29]</sup> Caltex (now Chevron) followed suit in 1917 when the company began marketing its products in the country.<sup>[30]</sup> In 1922, it built a warehouse depot which was later converted into a key distribution terminal.<sup>[31]</sup> The corporate presence in the Philippines of Esso (Petron's predecessor) became more keenly felt when it won a concession to build and operate a refinery in Bataan in 1957.<sup>[32]</sup> It then went on to operate a state-of-the-art lube oil blending plant in the Pandacan Terminals where it manufactures lubes and greases.<sup>[33]</sup>

On December 8, 1941, the Second World War reached the shores of the Philippine Islands. Although Manila was declared an open city, the Americans had no interest in welcoming the Japanese. In fact, in their zealous attempt to fend off the Japanese Imperial Army, the United States Army took control of the Pandacan Terminals and hastily made plans to destroy the storage facilities to deprive the advancing Japanese Army of a valuable logistics weapon.<sup>[34]</sup> The U.S. Army burned unused

petroleum, causing a frightening conflagration. Historian Nick Joaquin recounted the events as follows:

After the USAFFE evacuated the City late in December 1941, all army fuel storage dumps were set on fire. The flames spread, enveloping the City in smoke, setting even the rivers ablaze, endangering bridges and all riverside buildings. ... For one week longer, the "open city" blazed—a cloud of smoke by day, a pillar of fire by night.<sup>[35]</sup>

The fire consequently destroyed the Pandacan Terminals and rendered its network of depots and service stations inoperative.<sup>[36]</sup>

After the war, the oil depots were reconstructed. Pandacan changed as Manila rebuilt itself. The three major oil companies resumed the operation of their depots.<sup>[37]</sup> But the district was no longer a sparsely populated industrial zone; it had evolved into a bustling, hodgepodge community. Today, Pandacan has become a densely populated area inhabited by about 84,000 people, majority of whom are urban poor who call it home.<sup>[38]</sup> Aside from numerous industrial installations, there are also small businesses, churches, restaurants, schools, daycare centers and residences situated there.<sup>[39]</sup> Malacañang Palace, the official residence of the President of the Philippines and the seat of governmental power, is just two kilometers away.<sup>[40]</sup> There is a private school near the Petron depot. Along the walls of the Shell facility are shanties of informal settlers.<sup>[41]</sup> More than 15,000 students are enrolled in elementary and high schools situated near these facilities.<sup>[42]</sup> A university with a student population of about 25,000 is located directly across the depot on the banks of the Pasig river.<sup>[43]</sup>

The 36-hectare Pandacan Terminals house the oil companies' distribution terminals and depot facilities.<sup>[44]</sup> The refineries of Chevron and Shell in Tabangao and Bauan, both in Batangas, respectively, are connected to the Pandacan Terminals through a 114-kilometer<sup>[45]</sup> underground pipeline system.<sup>[46]</sup> Petron's refinery in Limay, Bataan, on the other hand, also services the depot.<sup>[47]</sup> The terminals store fuel and other petroleum products and supply 95% of the fuel requirements of Metro Manila,<sup>[48]</sup> 50% of Luzon's consumption and 35% nationwide.<sup>[49]</sup> Fuel can also be transported through barges along the Pasig river or tank trucks via the South Luzon Expressway.

We now discuss the first issue: whether movants-intervenors should be allowed to intervene in this case.

## **INTERVENTION OF THE OIL COMPANIES AND THE DOE SHOULD BE ALLOWED IN THE INTEREST OF JUSTICE**

Intervention is a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him, her or it to protect or preserve a right or interest which may be affected by such proceedings.<sup>[50]</sup> The pertinent rules are Sections 1 and 2, Rule 19 of the Rules of Court:

SEC. 1. Who may intervene. — A person who has a legal interest in the matter in litigation, or in the success of either of the parties, or an