

## FIRST DIVISION

[ G.R. NO. 156052, March 07, 2007 ]

**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.**

### DECISION

**CORONA, J.:**

In this original petition for *mandamus*,<sup>[1]</sup> petitioners Social Justice Society (SJS), Vladimir Alarique T. Cabigao and Bonifacio S. Tumbokon seek to compel respondent Hon. Jose L. Atienza, Jr., mayor of the City of Manila, to enforce Ordinance No. 8027.

The antecedents are as follows.

On November 20, 2001, the *Sangguniang Panlungsod* of Manila enacted Ordinance No. 8027.<sup>[2]</sup> Respondent mayor approved the ordinance on November 28, 2001.<sup>[3]</sup> It became effective on December 28, 2001, after its publication.<sup>[4]</sup>

Ordinance No. 8027 was enacted pursuant to the police power delegated to local government units, a principle described as the power inherent in a government to enact laws, within constitutional limits, to promote the order, safety, health, morals and general welfare of the society.<sup>[5]</sup> This is evident from Sections 1 and 3 thereof which 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 Pancacan 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 Section 1 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 Caltex (Philippines), Inc., Petron Corporation and Pilipinas Shell Petroleum Corporation.

However, on June 26, 2002, the City of Manila and the Department of Energy (DOE) entered into a memorandum of understanding (MOU)<sup>[6]</sup> with the oil companies in which they agreed that "the scaling down of the Pandacan Terminals [was] the most viable and practicable option." Under the MOU, the oil companies agreed to perform the following:

**Section 1.** - Consistent with the objectives stated above, the OIL COMPANIES shall, upon signing of this MOU, undertake a program to scale down the Pandacan Terminals which shall include, among others, the immediate removal/decommissioning process of TWENTY EIGHT (28) tanks starting with the LPG spheres and the commencing of works for the creation of safety buffer and green zones surrounding the Pandacan Terminals. xxx

**Section 2.** - Consistent with the scale-down program mentioned above, the OIL COMPANIES shall establish joint operations and management, including the operation of common, integrated and/or shared facilities, consistent with international and domestic technical, safety, environmental and economic considerations and standards. Consequently, the joint operations of the OIL COMPANIES in the Pandacan Terminals shall be limited to the common and integrated areas/facilities. A separate agreement covering the commercial and operational terms and conditions of the joint operations, shall be entered into by the OIL COMPANIES.

**Section 3.** - The development and maintenance of the safety and green buffer zones mentioned therein, which shall be taken from the properties of the OIL COMPANIES and not from the surrounding communities, shall be the sole responsibility of the OIL COMPANIES.

The City of Manila and the DOE, on the other hand, committed to do the following:

**Section 1.** - The City Mayor shall endorse to the City Council this MOU for its appropriate action with the view of implementing the spirit and intent thereof.

**Section 2.** - The City Mayor and the DOE shall, consistent with the spirit and intent of this MOU, enable the OIL COMPANIES to continuously operate in compliance with legal requirements, within the limited area resulting from the joint operations and the scale down program.

**Section 3.** - The DOE and the City Mayor shall monitor the OIL COMPANIES' compliance with the provisions of this MOU.

**Section 4.** - The CITY OF MANILA and the national government shall protect the safety buffer and green zones and shall exert all efforts at preventing future occupation or encroachment into these areas by illegal settlers and other unauthorized parties.

The *Sangguniang Panlungsod* ratified the MOU in Resolution No. 97.<sup>[7]</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>[8]</sup> Thereafter, on January 30, 2003, the *Sanggunian* adopted Resolution No. 13<sup>[9]</sup> extending the validity of Resolution No. 97 to April 30, 2003 and authorizing Mayor Atienza to issue special business permits to the oil companies. Resolution No. 13, s. 2003 also called for a reassessment of the ordinance.<sup>[10]</sup>

Meanwhile, petitioners filed this original action for *mandamus* on December 4, 2002 praying that Mayor Atienza be compelled to enforce Ordinance No. 8027 and order the immediate removal of the terminals of the oil companies.<sup>[11]</sup>

The issues raised by petitioners are as follows:

1. whether respondent has the mandatory legal duty to enforce Ordinance No. 8027 and order the removal of the Pandacan Terminals, and
2. whether the June 26, 2002 MOU and the resolutions ratifying it can amend or repeal Ordinance No. 8027.<sup>[12]</sup>

Petitioners contend that respondent has the mandatory legal duty, under Section 455 (b) (2) of the Local Government Code (RA 7160),<sup>[13]</sup> to enforce Ordinance No. 8027 and order the removal of the Pandacan Terminals of the oil companies. Instead, he has allowed them to stay.

Respondent's defense is that Ordinance No. 8027 has been superseded by the MOU and the resolutions.<sup>[14]</sup> However, he also confusingly argues that the ordinance and MOU are not inconsistent with each other and that the latter has not amended the former. He insists that the ordinance remains valid and in full force and effect and that the MOU did not in any way prevent him from enforcing and implementing it. He maintains that the MOU should be considered as a mere guideline for its full implementation.<sup>[15]</sup>

Under Rule 65, Section 3<sup>[16]</sup> of the Rules of Court, a petition for *mandamus* may be filed when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station. *Mandamus* is an extraordinary writ that is employed to compel the performance, when refused, of a ministerial duty that is already imposed on the respondent and there is no other plain, speedy and adequate remedy in the ordinary course of law. The petitioner should have a well-defined, clear and certain legal right to the performance of the act and it must be the clear and imperative duty of respondent to do the act required to be done.<sup>[17]</sup>

*Mandamus* will not issue to enforce a right, or to compel compliance with a duty, which is questionable or over which a substantial doubt exists.