

EN BANC

[G.R. NO. 158793, June 08, 2006]

**JAMES MIRASOL, RICHARD SANTIAGO, AND LUZON
MOTORCYCLISTS FEDERATION, INC., PETITIONERS, VS.
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS AND TOLL
REGULATORY BOARD, RESPONDENTS.**

DECISION

CARPIO, J.:

This petition for review on certiorari^[1] seeks to reverse the Decision dated 10 March 2003 of the Regional Trial Court, Branch 147, Makati City (RTC) in Civil Case No. 01-034, as well as the RTC's Order dated 16 June 2003 which denied petitioners' Motion for Reconsideration. Petitioners assert that Department of Public Works and Highways' (DPWH) Department Order No. 74 (DO 74), Department Order No. 215 (DO 215), and the Revised Rules and Regulations on Limited Access Facilities of the Toll Regulatory Board (TRB) violate Republic Act No. 2000 (RA 2000) or the Limited Access Highway Act. Petitioners also seek to declare Department Order No. 123 (DO 123) and Administrative Order No. 1 (AO 1)^[2] unconstitutional.

Antecedent Facts

The facts are not in dispute. As summarized by the Solicitor General, the facts are as follows:

1. On January 10, 2001, petitioners filed before the trial court a Petition for Declaratory Judgment with Application for Temporary Restraining Order and Injunction docketed as Civil Case No. 01-034. The petition sought the declaration of nullity of the following administrative issuances for being inconsistent with the provisions of Republic Act 2000, entitled "Limited Access Highway Act" enacted in 1957:
 - a. DPWH Administrative Order No. 1, Series of 1968;
 - b. DPWH Department Order No. 74, Series of 1993;
 - c. Art. II, Sec. 3(a) of the Revised Rules on Limited Access Facilities promulgated in 199^[8] by the DPWH thru the Toll Regulatory Board (TRB).
2. Previously, pursuant to its mandate under R.A. 2000, DPWH issued on June 25, 1998 Department Order (DO) No. 215 declaring the Manila-Cavite (Coastal Road) Toll Expressway as limited access

facilities.

3. Accordingly, petitioners filed an Amended Petition on February 8, 2001 wherein petitioners sought the declaration of nullity of the aforesaid administrative issuances. Moreover, petitioners prayed for the issuance of a temporary restraining order and/or preliminary injunction to prevent the enforcement of the total ban on motorcycles along the entire breadth of North and South Luzon Expressways and the Manila-Cavite (Coastal Road) Toll Expressway under DO 215.
4. On June 28, 2001, the trial court, thru then Presiding Judge Teofilo Guadiz, after due hearing, issued an order granting petitioners' application for preliminary injunction. On July 16, 2001, a writ of preliminary injunction was issued by the trial court, conditioned upon petitioners' filing of cash bond in the amount of P100,000.00, which petitioners subsequently complied with.
5. On July 18, 2001, the DPWH acting thru the TRB, issued Department Order No. 123 allowing motorcycles with engine displacement of 400 cubic centimeters inside limited access facilities (toll ways).
6. Upon the assumption of Honorable Presiding Judge Ma. Cristina Cornejo, both the petitioners and respondents were required to file their respective Memoranda. Petitioners likewise filed [their] Supplemental Memorandum. Thereafter, the case was deemed submitted for decision.
7. Consequently, on March 10, 2003, the trial court issued the assailed decision dismissing the petition but declaring invalid DO 123. Petitioners moved for a reconsideration of the dismissal of their petition; but it was denied by the trial court in its Order dated June 16, 2003.^[3]

Hence, this petition.

The RTC's Ruling

The dispositive portion of the RTC's Decision dated 10 March 2003 reads:

WHEREFORE, [t]he Petition is denied/dismissed insofar as petitioners seek to declare null and void ab initio DPWH Department Order No. 74, Series of 1993, Administrative Order No. 1, and Art. II, Sec. 3(a) of the Revised Rules on Limited Access Facilities promulgated by the DPWH thru the TRB, the presumed validity thereof not having been overcome; but the petition is granted insofar as DPWH Department Order No. 123 is concerned, declaring the same to be invalid for being violative of the equal protection clause of the Constitution.

SO ORDERED.^[4]

The Issues

Petitioners seek a reversal and raise the following issues for resolution:

1. WHETHER THE RTC'S DECISION IS ALREADY BARRED BY RES JUDICATA;
2. WHETHER DO 74, DO 215 AND THE TRB REGULATIONS CONTRAVENE RA 2000; AND
3. WHETHER AO 1 AND DO 123 ARE UNCONSTITUTIONAL.^[5]

The Ruling of the Court

The petition is partly meritorious.

Whether the RTC's Decision Dismissing Petitioners' Case is Barred by Res Judicata

Petitioners rely on the RTC's Order dated 28 June 2001, which granted their prayer for a writ of preliminary injunction. Since respondents did not appeal from that Order, petitioners argue that the Order became "a final judgment" on the issues. Petitioners conclude that the RTC erred when it subsequently dismissed their petition in its Decision dated 10 March 2003.

Petitioners are mistaken. As the RTC correctly stated, the Order dated 28 June 2001 was not an adjudication on the merits of the case that would trigger *res judicata*. A preliminary injunction does not serve as a final determination of the issues. It is a provisional remedy, which merely serves to preserve the status quo until the court could hear the merits of the case.^[6] Thus, Section 9 of Rule 58 of the 1997 Rules of Civil Procedure requires the issuance of a final injunction to confirm the preliminary injunction should the court during trial determine that the acts complained of deserve to be permanently enjoined. A preliminary injunction is a mere adjunct, an ancillary remedy which exists only as an incident of the main proceeding.^[7]

Validity of DO 74, DO 215 and the TRB Regulations

Petitioners claim that DO 74,^[8] DO 215,^[9] and the TRB's Rules and Regulations issued under them violate the provisions of RA 2000. They contend that the two issuances unduly expanded the power of the DPWH in Section 4 of RA 2000 to regulate toll ways. Petitioners assert that the DPWH's regulatory authority is limited to acts like redesigning curbsings or central dividing sections. They claim that the DPWH is only allowed to re-design the physical structure of toll ways, and not to determine "who or what can be qualified as toll way users."^[10]

Section 4 of RA 2000^[11] reads:

SEC. 4. *Design of limited access facility.* - The **Department of Public Works and Communications is authorized to so design any limited access facility and to so regulate, restrict, or prohibit access as to**

best serve the traffic for which such facility is intended; and its determination of such design shall be final. In this connection, it is authorized to divide and separate any limited access facility into separate roadways by the construction of raised curbing, central dividing sections, or other physical separations, or by designating such separate roadways by signs, markers, stripes, and the proper lane for such traffic by appropriate signs, markers, stripes and other devices. No person, shall have any right of ingress or egress to, from or across limited access facilities to or from abutting lands, except at such designated points at which access may be permitted, upon such terms and conditions as may be specified from time to time. (Emphasis supplied)

On 19 February 1968, Secretary Antonio V. Raquiza of the **Department of Public Works and Communications** issued AO 1, which, among others, prohibited motorcycles on limited access highways. The pertinent provisions of AO 1 read:

SUBJECT: Revised Rules and Regulations
Governing Limited Access
Highways

By virtue of the authority granted the Secretary [of] Public Works and Communications under Section 3 of R.A. 2000, otherwise known as the Limited Access Highway Act, the following rules and regulations governing limited access highways are hereby promulgated for the guidance of all concerned:

x x x x

Section 3 - **On limited access highways, it is unlawful for any person or group of persons to:**

x x x x

(h) **Drive** any bicycle, tricycle, pedicab, **motorcycle** or any vehicle (not motorized);

x x x x^[12] (Emphasis supplied)

On 5 April 1993, Acting Secretary Edmundo V. Mir of the **Department of Public Works and Highways** issued DO 74:

SUBJECT: Declaration of the North
Luzon Expressway from
Balintawak to Tabang and the
South Luzon Expressway from
Nichols to Alabang as Limited
Access Facilities

Pursuant to Section 2 of Republic Act No. 2000, a limited access facility is defined as "a highway or street especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a limited right or easement of access, light, air or view by reason of the fact that their proper[t]y abuts

upon such limited access facility or for any other reason. Such highways or streets may be parkways, from which trucks, buses, and other commercial [sic] vehicles shall be excluded; or they may be free ways open to use by all customary forms of street and highway traffic."

Section 3 of the same Act authorizes the Department of Public Works and Communications (now Department of Public Works and Highways) "to plan, designate, establish, regulate, vacate, alter, improve, maintain, and provide limited access facilities for public use wherever it is of the opinion that traffic conditions, present or future, will justify such special facilities."

Therefore, by virtue of the authority granted above, the Department of Public Works and Highways hereby designates and declares the Balintawak to Tabang Sections of the North Luzon Expressway, and the Nichols to Alabang Sections of the South Luzon Expressways, to be LIMITED ACCESS HIGHWAYS/FACILITIES subject to such rules and regulations that may be imposed by the DPWH thru the Toll Regulatory Board (TRB).

In view thereof, the National Capital Region (NCR) of this Department is hereby ordered, after consultation with the TRB and in coordination with the Philippine National Police (PNP), to close all illegal openings along the said Limited Access Highways/Facilities. In this connection, the NCR is instructed to organize its own enforcement and security group for the purpose of assuring the continued closure of the right-of-way fences and the implementation of the rules and regulations that may be imposed by the DPWH thru the TRB.

This Order shall take effect immediately.^[13]

On 25 June 1998, then DPWH Secretary Gregorio R. Vigilar issued DO 215:

SUBJECT: Declaration of the R-1 Expressway,
from Seaside drive to Zapote, C-5 Link
Expressway, from Zapote to Noveleta,
of the Manila Cavite Toll Expressway
as Limited Access Facility.

Pursuant to Section 2 of Republic Act No. 2000, a limited access facility is defined as "a highway or street especially designed for through traffic, and over, from, or to which owners or occupants of abutting land or other persons have no right or easement or only a limited right or easement of access, light, air or view by reason of the fact that their property abuts upon such limited access facility or for any other reason. Such highways or streets may be parkways, from which trucks, buses, and other commercial vehicles shall be excluded; or they may be free ways open to use by all customary forms of street and highway traffic."

Section 3 of the same Act authorizes the Department of Public Works and Communications (now Department of Public Works and Highways) "to plan, designate, establish, regulate, vacate, alter, improve, maintain, and