484 Phil. 730

SECOND DIVISION

[G.R. No. 137862, November 11, 2004]

ALFREDO ESTRADA, RENATO T. CANILANG AND MANUEL C. LIM, PETITIONERS, VS. COURT OF APPEALS AND BACNOTAN CEMENT CORPORATION (BCC), RESPONDENTS.

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before this Court is a petition for review on *certiorari* of the decision[1] of the Court of Appeals in CA-G.R. SP No. 44324, promulgated on April 6, 1998, and the resolution[2] dated February 24, 1999 denying petitioners' motion for reconsideration.

The facts are as follows:

Alfredo Estrada, Renato T. Canilang and Manuel C. Lim, as concerned citizens and taxpayers, filed on July 31, 1996, before the Regional Trial Court (RTC) of Olongapo City, a complaint for Injunction and Damages with Prayer for Preliminary Injunction and Temporary Restraining Order against Bacnotan Cement Corp. (BCC), Wawandue Fishing Port, Inc. (WFPI), Jeffrey Khong Hun as President of WFPI, Manuel Molina as Mayor of Subic, Zambales, and Ricardo Serrano as Regional Director of the Department of Environment and Natural Resources (DENR).

The complaint alleges that: WFPI and the Municipality of Subic entered into an illegal lease contract, which in turn became the basis of a sub-lease in favor of BCC; the sub-lease between WFPI and BCC is a violation of the first lease because the cement plant, which BCC intended to operate in Wawandue, Subic, Zambales, is not related to the fish port business of WFPI; and BCC's cement plant is a nuisance because it will cause pollution, endanger the health, life and limb of the residents and deprive them of the full use and enjoyment of their properties. The plaintiffs prayed that an order be issued: to restrain and prohibit BCC from opening, commissioning, or otherwise operating its cement plant; and to require the defendants to jointly and solidarily pay the plaintiffs P205,000.00 by way of actual, moral and exemplary damages and attorney's fees.[3]

Defendants WFPI/Khong Hun and BCC filed separate motions to dismiss, both alleging that the complaint states no cause of action. BCC, in its motion, added that: the plaintiffs failed to exhaust administrative remedies before going to court; that the complaint was premature; and that the RTC has no jurisdiction on the matter. Respondent Serrano of the DENR also filed a motion to dismiss stating that there was no cause of action insofar as he is concerned since there was nothing in the complaint that shows any dereliction of duty on his part.[4]

On December 6, 1996, Judge Eliodoro G. Ubiadas of RTC Olongapo City, Branch 72,

issued an order denying respondents' motions to dismiss and granting the prayer for a writ of preliminary injunction.[5] Pertinent portions of the order read as follows:

> The Court notes that the powers vested by law under Executive Order 192, Republic Act 3931 and Presidential Decree 984 are regulatory merely and for the purpose of determining whether pollution exists.
>
> However, under the laws above-mentioned, the powers granted to the DENR thru the Pollution Adjudication Board did not expressly exclude the Courts which under the law are empowered to try both questions of facts and law to determine whether pollution which maybe nuisance per se or by accidents (sic) exist or likely to exist. Under the Constitution, the courts are imbued the inherent power of general jurisdiction to resolve these issues. While it maybe (sic) true that petitioners might have first to seek relief thru the DENR's Pollution Adjudication Board a resort to the remedy provided under the Pollution Adjudication Board is rendered useless and ineffective in the light of the urgency that the said pollution be restrained outright in lieu of the impending risk described in the petition. It will be noted that the DENR did not have the power either in Executive Order 192, Republic Act 3931 and Presidential Decree 984 to issue a writ of injunction. The argument therefore for the exhaustion of administrative remedy and lack of jurisdiction does not warrant the dismissal of this petition against Bacnotan Cement Corporation.[6]

Respondents' motions for reconsideration were likewise denied by the trial court in an order dated May 13, 1997.[7]

Respondent BCC then went to the Court of Appeals on a petition for *certiorari* and prohibition with preliminary injunction and/or temporary restraining order seeking to reverse and set aside the orders dated December 6, 1996 and May 13, 1997 as well as to lift the writ of preliminary injunction dated December 11, 1996.

On April 6, 1998, the Court of Appeals rendered its decision, granting BCC's petition, thus:

> WHEREFORE, in the light of the foregoing disquisitions, the instant petition for certiorari is GRANTED. The assailed Orders dated December 6, 1996 and May 13, 1997 are hereby SET ASIDE. The writ of injunction issued by the public respondent under date of December 11, 1996 is forthwith, LIFTED and the Complaint insofar as petitioner BCC is concerned is ordered forthwith DISMISSED. No costs.
>
> SO ORDERED.[8]

It reasoned that:

> *FIRSTLY.* …We find that the denial of said Motion to Dismiss by the Court *a quo*, was a grave abuse of discretion because of the doctrine of Administrative Remedy which requires that where an administrative remedy is provided by statute, relief must be sought administratively first before the Court will take action thereon. As ruled by the Supreme Court in the case of *Abe Abe, et al. vs. Manta* (90 SCRA 524). "*When an*

adequate remedy may be had within the Executive Department of the government but nevertheless a litigant fails or refuses to avail himself of the same, the Judiciary shall decline to interfere. This traditional attitude of the Court is based not only on respect for party litigants but also on respect for a co-equal office in the government. In fine, our Supreme Court has categorically explained in *Aquino vs. Mariano* (129 SCRA 209) that *whenever, there is an available Administrative Remedy provided by law, no judicial recourse can be made until such remedy* has been availed of and exhausted for three (3) reasons that: (1) Resort to court maybe unnecessary if administrative remedy is available; (2) Administrative Agency may be given a chance to correct itself; and (3) The principle of Amity and Convenience requires that no court can act until administrative processes are completed. *Commissioner of Customs vs. Navarro (77 SCRA 264)*.

SECONDLY, it is a well-settled rule that the jurisdiction of the Regional Trial Court is general in character, referring to the existence of *nuisance* under the provision of Article 694 of the New Civil Code. On the other hand, the Department of Environment and Natural Resources, through the Pollution Adjudication Board (PAB) under R.A. 3931 as amended by P.D. 984, prescribes the Abatement of *Pollution*. In fine, when it comes to nuisance, the Court has general jurisdiction under the New Civil Code. But when it comes to pollution which is specific, the administrative body like the DENR has jurisdiction. Clearly, *nuisance* is general or broader in concept while pollution is specific. Following the rule that the specific issue of pollution, which is under the jurisdiction of DENR prevails over the general issue of *nuisance* which is under the jurisdiction of the RTC (Lagman vs. City of Manila, 17 SCRA 579), there is no doubt that the DENR and not the Court should have jurisdiction. Hence, the motion to dismiss filed by petitioner should have been GRANTED by the Court a quo. Since it has no jurisdiction over the subject matter. Its denial by public respondent was therefore a grave abuse of discretion, which is correctible by *certiorari*.

THIRDLY. We should not lose sight of the fact that the *authority to construct* in this case is *necessarily required prior* to the actual construction of petitioner's cement bulk terminal while the permit to operate likewise is required before the petitioner's cement bulk terminal commences its operation. In this case, the petitioner, at the time, had only the authority to construct, pursuant to a valid contract between the WFPI and the petitioner BCC, approved by the Sangguniang Bayan of Subic and Sangguniang Panlalawigan of Zambales and pursuant to the requisite of DENR. Again, it should be remembered that, at the time, petitioner did not yet have the permit to operate (which should properly be made only after a *factual determination* of the *levels of pollution* by the DENR). Hence, the injunction issued in this case is *premature* and should not have been issued at all by public respondent.

FOURTHLY. The effect of the writ of injunction enjoining petitioner from operating the cement bulk terminal (Order of December 6, 1996) and the public respondent's refusal to defer the proceedings below, virtually preempt the DENR from making such determination, nay even the

authority to issue the permit to operate is likewise preempted. How can we therefore enjoin operation before the issuance of the permit to operate? It is also a *settled rule that the remedy of injunction is not proper where an administrative remedy is available*. The permit to operate may not even be issued, at all, by the DENR (*Buayan Cattle Co. Inc., vs. Quintillan*, 128 SCRA 276).

Evidently, the writ of injunction issued in this case, as We view it, is *premature.* In fact, by issuing the *Order of Dec. 6, 1996*, the public respondent wrestled the authority from the DENR to determine whether the cement bulk terminal will cause pollution or not, or whether the pollution may only be on acceptable level as to justify the issuance of the *permit to operate*.

While conceding that prior resort should be made to the DENR, the respondent Judge proceeded to take the contrary stand, following the private respondent's contention that the doctrine of exhaustion of administrative remedies are [sic] inapplicable, since it would cause irreparable injury if private respondents should avail of administrative step before taking Court action.

We do not agree.

The respondents' contention is clearly *baseless* and highly *speculative* because how can it possibly produce irreparable injury before the *actual operation* since petitioner has not yet been issued *permit to operate*. Besides, We find no evidence shown in the complaint or alleged therein that will support the presence of pollution and which could properly be the subject of injunction.

Finally, it is interesting to note that the complaint filed by the private respondents has no prayer for preliminary injunction (it was not asked, why then should it be given?). Furthermore, the *Sublease Agreement* having been *partly executed*, it could no longer be enjoined.

By and large, the lower court's denial of petitioner's motion to dismiss is undoubtedly a *grave abuse of discretion* amounting to *lack of jurisdiction*. [9]

The Court of Appeals denied petitioners' motion for reconsideration on February 24, 1999.[10] Hence the present petition alleging that:

I

. . . THE HONORABLE COURT OF APPEALS HAD CLEARLY DEPARTED FROM THE ESTABLISHED JURISPRUDENCE ENUNCIATED BY THIS HONORABLE COURT WHEN IT RULED THAT THE HEREIN PETITIONERS FAILED TO EXHAUST ADMINISTRATIVE REMEDIES AVAILABLE TO THEM BEFORE THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR) POLLUTION ADJUDICATION BOARD (PAB); and that

II

THE COURT OF APPEALS ALSO GROSSLY ERRED IN RULING THAT THE REGIONAL TRIAL COURT OF OLONGAPO CITY, BRANCH 72 HAS NO JURISDICTION OVER THE ISSUE OF POLLUTION.[11]

Petitioners argue that: prior resort to an administrative agency is futile and unnecessary since great and irreparable injury would ensue if the cement repacking plant is allowed to operate in Wawandue, Subic, Zambales; only the court can grant them speedy, effective and immediate relief since the DENR-Pollution Adjudication Board (PAB) has no authority to issue the needed writ of injunction prayed for by petitioners; E.O. No. 192,[12] R.A. No. 3931[13] or P.D. No. 984[14] does not expressly exclude the power and authority of the RTC to try both questions of fact and of law relative to the determination of the existence of pollution arising from the operation of respondent's cement repacking plant either as a *nuisance per se* or a *nuisance per accidens*; and the lower court under the Constitution is imbued with the inherent power and jurisdiction to resolve the issue of pollution.[15]

In its Comment, BCC contends that: the instant petition should be dismissed because it is not accompanied by a copy of the petition in CA G.R. SP No. 44324, which violates Rule 45, Sec. 4 of the Rules of Court requiring that the petition be accompanied by relevant pleadings;[16] the Court of Appeals correctly held that the jurisdiction to determine the issue of pollution is lodged primarily with the DENR and not with the RTC; under P.D. No. 984, the task of determining the existence of pollution was bestowed on the National Pollution Control Commission (NPCC), the powers of which were assumed by the DENR under E.O. No. 192; the jurisdiction of the trial courts anent abatement of nuisance in general cannot prevail over the specific, specialized and technical jurisdiction of the DENR-PAB; under the doctrine of exhaustion of administrative remedies, where competence to determine the same issue is placed in the trial court and an administrative body and the issue involves a specialized and technical matter, relief should first be sought before the administrative body prior to instituting suit before the regular courts; the relief sought by the petitioners to prevent the supposedly injurious operation of BCC's cement bulk terminal can be effectively obtained from the DENR, which, under P.D. No. 984, has the authority to grant, modify and revoke permits, and to issue orders for the abatement of pollution and impose mandatory pollution control measures for compliance;[17] since the BCC only has an "authority to construct" and not yet "permit to operate" at the time of the filing of the complaint, the writ of injunction issued by the trial court preempted the DENR from making the determination of whether or not BCC should be allowed to operate; the complaint was properly dismissed since petitioners have no legal capacity to bring a suit for abatement of nuisance; and the right invoked by petitioners is abstract and is not sufficient to confer *locus standi*.[18]

In their Reply, petitioners reiterated their arguments and added that they have fully complied with the requirements of Rule 45.[19]

The principal issue that needs to be resolved is whether or not the instant case falls under the exceptional cases where prior resort to administrative agencies need not be made before going to court.

We answer in the negative.