

SIXTEENTH DIVISION

[CA-G.R. SP NO. 126212, June 23, 2014]

THE CITY GOVERNMENT OF BAGUIO CITY, REPRESENTED BY MAURICIO G. DOMOGAN, CITY MAYOR; ANTI-SQUATTING AND ANTI-ILLEGAL STRUCTURE COMMITTEE, REPRESENTED BY ATTY. CARLOS M. CANILAO; THE OFFICE OF THE CITY ADMINISTRATOR, REPRESENTED BY ATTY. CARLOS M. CANILAO, CITY ADMINISTRATOR, CITY BUILDINGS AND ARCHITECTURE OFFICE, REPRESENTED BY OSCAR FLORES; PUBLIC ORDER AND SAFETY OFFICE, REPRESENTED BY FERNANDO MOYAEN, AND CITY DEMOLITION TEAM, REPRESENTED BY ITS HEAD, NAZITA BAÑEZ, PETITIONERS, VS. ATTY. BRAIN MASWENG, REGIONAL OFFICER - NATIONAL COMMISSION ON INDIGENOUS PEOPLE-CAR, ASUNCION NIMER, RESPONDENTS.

DECISION

CORALES, J.:

This is a Petition for *Certiorari*^[1] under Rule 65 of the Rules of Court assailing the January 24, 2011^[2] and the June 5, 2012^[3] Resolutions of the National Commission on Indigenous People-CAR (NCIP-CAR) in NCIP CASE No. 05-CAR-10. The first assailed Resolution granted private respondent Asuncion Nimer's (Nimer) application for issuance of a writ of preliminary injunction against the enforcement of Demolition Order No.11 Series of 2009 while the second Resolution denied petitioner's motion for reconsideration.

The Antecedents

Nimer constructed a bungalow structure and two (2) flat forms for commercial plantings near the alley of Casa Vallejo Building, Upper Session Road, Baguio City. Upon the letter of one Nathaniel Cruz (Cruz), the City Government of Baguio (City Government) conducted an ocular inspection on the premises and found that Nimer's structures are not covered by any building permit.^[4] Following the recommendation of the Anti-Squatting and Anti-Illegal Structures Committee (ASAISC),^[5] the Office of the City Mayor through the City Administrator issued on July 30, 2008 Notice of Demolition No. 30, Series of 2008^[6] requiring Nimer to submit evidence to justify her construction or to voluntarily remove the structures within ten (10) days. As shown by the Public Order and Safety Division's (POSD) report^[7] dated September 2, 2008 and the May 16, 2009 letter^[8] of the Baguio Centennial Commission, Nimer failed to comply with the foregoing directives prompting the City Government to issue on September 16, 2009 Demolition Order No. 11 Series of 2009^[9]. On November 10, 2009, the City Demolition Team notified Nimer of the scheduled enforcement of the demolition order on February 16, 2010.^[10]

On February 15, 2010, Nimer filed before NCIP-CAR a complaint^[11] for enforcement of rights over ancestral land and injunction with prayer for issuance of temporary restraining order (TRO) and/or writ of preliminary injunction (WPI) against the Office of the City Mayor, the City Administrator, City Building and Architecture, ASAISC, POSD, City Demolition Team and Cruz (collectively referred herein as petitioners). She alleged that her structures are found in the ancestral land of Richard Acop (Acop), one of the heirs of Cosen Piraso and Sixto Acop who were descendants of the early Ibaloi settlers in Baguio City and has a pending petition for identification, delineation and recognition of ancestral land before the NCIP. According to Nimer, her parents, Juanita Saga-oc and Rafael Nimer, were the caretakers of the ancestral land and thereafter made part-owners by the ancestors of Acop. The portion inherited by her parents was passed to her by virtue of the waiver of rights^[12] executed by her mother in her favor including an old structure which she renovated and declared for tax purposes.

On that same day, the NCIP-CAR issued a resolution^[13] granting Nimer's prayer for the issuance of TRO.

Petitioners filed their Answer^[14] arguing that Nimer has no legal right that could be protected by a writ of injunction because she is only capitalizing on the application of Acop who is not her relative by affinity or consanguinity. They also questioned the jurisdiction of NCIP-CAR contending that Nimer is not a member of the Indigenous People of Baguio because she has not been issued any Certification of Confirmation from the NCIP-Baguio Office.

On November 10, 2010, the NCIP issued a Certificate of Ancestral Land Title (CALT) to the Heirs of Cosen Piraso represented by Acop and the same was registered with the Registry of Deeds on December 8, 2010 under Original Certificate of Title No. 0-CALT-129. (OCT CALT-129)^[15] The land covered by the CALT had been subdivided into lots in accordance with the subdivision lot approved by the Ancestral Domains Office and OCT CALT-129 has been cancelled. Among those included in the partition was Manuel Nimer married to Juanita S. Nimer who subsequently registered his portion thereof under Transfer Certificate of Title (TCT) No. 018-2010002858.^[16]

The NCIP-CAR Ruling

On January 24, 2011, the NCIP-CAR issued the assailed Resolution^[17] granting Nimer's prayer for WPI based on the following ratiocination:

xxx Indigenous Peoples are the offsprings and heirs of the peoples who have first inhabited and cared for the land long before any central government was established, their ancestors had territories over which they ruled themselves and related with other tribes . . . Their existence as indigenous peoples is manifested in their own lives through political, economic, socio-cultural and spiritual practices. The Indigenous Peoples' culture is the living and irrefutable proof to this. In the Cordillera, we have Apayao, Kalinga, Etnag, Etneg, Tingguian, Bago, Applai, Bontoc, Ifugao, Ibaloi, Kalanguya, Kankanaey, Owak and Karao.

From the foregoing, the issuance of a certificate of confirmation (COC) is not a requirement for an IP to secure before he can be considered as a member of an indigenous cultural community.

The petitioner's claim of ownership of the ancestral land subject hereof, just as her predecessor-in-interest maintain, is by virtue of native title and not ownership by acquisitive prescription. When indigenous peoples assert that a certain land is their ancestral land, there is legal presumption that they have a native title over said land. The law so states, thus:

xxx

Anent the allegation of public respondents that petitioner's structure should be demolished for being illegally constructed as it is without the requisite building permit, it is ruled herein that the petitioner is entitled to the protection of her right over her ancestral land as mandated by the 1987 Philippine Constitution. Section 5, Article XII of the Constitution provides: "The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being." xxx The enabling law of this constitutional guarantee is Republic Act No. 8371 and we must implement the law so that ICCs/IPs will realize their rights guaranteed by the Constitution. To demolish petitioner's structure for failure to show a building permit would result to the continuation of injustice to ICCs/IPs.

WHEREFORE, premises considered, the application for the issuance of a writ for preliminary injunction is hereby granted upon petitioner's filing of injunctive bond in the amount of One Hundred Thousand Pesos (P100,000.00).

So ordered[.]

Petitioners moved for reconsideration^[18] reiterating their argument that the minimum legal requisites for the issuance of a preliminary prohibitory injunction have not been satisfied considering that Nimer's right over the property is not clear and unmistakable. They also moved for the substitution of individual respondents in the case below who were impleaded in their official capacities as Mayor, City Administrator, Chairman of ASAISC, and head of POSD.

The NCIP-CAR denied the motion for reconsideration through its June 5, 2012 Resolution^[19] and held that with the issuance of CALT covering the subject property where Nimer is one of the beneficiaries and the inclusion of her structures in the ancestral land, she already had a right to be protected by an injunctive writ otherwise, she will suffer grave and irreparable damage or injury. However, the NCIP-CAR granted the motion for substitution of parties.

Unfazed, petitioners filed the instant petition for *certiorari* premised on the following grounds:

I.

RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PRIVATE RESPONDENT IS A MEMBER OF THE INDIGENOUS PEOPLE OF BAGUIO CITY AND THAT SHE HAS A VALID ANCESTRAL LAND CLAIM.