



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated May 14, 2021 which reads as follows:

“G.R. No. 211665 (City Government of Pasay, represented by its Mayor, Antonino G. Calixto v. The Honorable Court of Appeals, Regional Trial Court of Pasay City, Branch 118, Manila International Airport Authority, and Manila Electric Company (Meralco)).

This is an appeal from the November 4, 2013 Decision¹ of the Court of Appeals (CA), which found no grave abuse of discretion on the part of the Regional Trial Court of Pasay City, Branch 118 (RTC), in issuing a writ of preliminary mandatory injunction and denying the City Government of Pasay’s motion to dissolve the said writ. The RTC’s orders, in turn, enabled the Manila International Airport Authority (MIAA) and Manila Electric Company (MERALCO) to complete the project for the installation of sub-transmission lines that serve the power requirements of the Ninoy Aquino International Airport Terminal III (NAIA Terminal III).

In 2001, Philippine International Air Terminals Co., Inc. (PIATCO), the former operator of NAIA Terminal III, applied for electric service with MERALCO, a private corporation organized under Philippine law and engaged in the distribution of electricity to customers within its franchise area, to address the terminal’s power deficiency. After evaluation, Meralco proposed the construction of a power substation beside the terminal. With PIATCO’s concurrence, MERALCO completed the substation the following year. To energize the substation, MERALCO also recommended the installation of two

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¹ *Rollo*, pp. 29-39; penned by Associate Justice Ricardo R. Rosario (now a Member of the Court) with Associate Justices Rosmari D. Carandang (now also a Member of the Court) and Leoncia Real-Dimagiba, concurring.

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sub-transmission lines which will require setting up concrete and steel electrical poles. These poles will traverse some areas along Barangay 183 in Pasay City.²

In December 2004, MIAA, a government instrumentality created under Executive Order No. 778, Series of 1982, as amended, and the agency vested with the power to administer and operate international airports in Manila, among others, took over the operations of NAIA Terminal III. For this reason, MERALCO transferred the service in the name of MIAA.³

On September 1, 2009, after MERALCO had secured the Barangay Working Permit Clearance⁴ from Barangay 183 of Pasay City, the City Engineer of the Pasay City Government issued an excavation permit. This allowed MERALCO to commence excavations for purposes of putting up the transmission poles. However, the project was suspended when the City Engineer issued a Suspension Order⁵ dated December 3, 2009, after considering the complaints received from residents of Barangay 183 and finding out that MERALCO failed to obtain the locational/zonal clearance and certificate of no objection from the Pasay City Council, as required by Ordinance No. 4187, Series of 2008 (Ordinance 4187).⁶

Aggrieved by the delay in the full operation of NAIA Terminal III, MIAA filed a petition for injunction with prayer for the issuance of a writ of preliminary mandatory injunction before the RTC to compel the City Government of Pasay to lift the suspension order, and MERALCO to supply the electricity required for the full operation of NAIA Terminal III. The case was docketed as Civil Case No. R-PSY-10-03913-CV and raffled to Branch 118 of the court.⁷

On July 23, 2010, the RTC issued an Order⁸ granting MIAA's application for the issuance of a writ of preliminary mandatory injunction. It lifted the suspension order issued by the City Engineer and directed MERALCO to continue the acts already commenced that are necessary for the supply of electricity to NAIA Terminal III.⁹ MIAA posted the injunction bond on July 27, 2010, and the writ of

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² Id. at 30-31.

³ Id. at 31.

⁴ Id. at 789.

⁵ Id. at 846-A.

⁶ Id. at 31-32.

⁷ Id. at 32.

⁸ Id. at 864-873.

⁹ Id. at 873.

preliminary mandatory injunction was issued on the same date. MERALCO was able to complete the installation of the sub-transmission lines.¹⁰

On August 6, 2010, the City Government of Pasay filed a Motion for Dissolution of the Writ of Preliminary Mandatory Injunction.¹¹ However, this was denied by the RTC in its September 17, 2010 Order.¹² Consequently, the City Government of Pasay filed a Petition for *Certiorari*¹³ before the CA, alleging grave abuse of discretion on the part of the RTC in issuing the writ of preliminary mandatory injunction in favor of MIAA, and in denying the motion for the dissolution of the said writ.¹⁴

In its assailed decision, the CA found no grave abuse of discretion on the part of the RTC, and consequently dismissed the petition. It held that the RTC had sufficiently determined the propriety of issuing the writ of preliminary mandatory injunction. It also affirmed the RTC's finding that the City Government of Pasay's act of suspending the excavation permit was unjustified considering that MERALCO had complied with all the requirements for its issuance.¹⁵ The City Government of Pasay failed to successfully establish how the irregularity in the issuance of the excavation permit came about and MERALCO's participation therein. Hence, the presumption of regularity in the issuance of the permit persists.¹⁶

Moreover, the CA held as unavailing the Pasay City Government's insistence on the supposed correct interpretation of Ordinance 4187 which required the submission of zoning clearance and certificate of no objection from the Pasay City Council prior to the issuance of an excavation permit. According to the CA, the basic rule of statutory construction is that *what is not included is excluded*. Electrical poles are clearly not covered by the ordinance.¹⁷ The dispositive portion of the CA decision states:

WHEREFORE, in view of the foregoing, the *petition for certiorari* filed by the City Government of Pasay is **DISMISSED**.

SO ORDERED.¹⁸

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¹⁰ Id. at 33.

¹¹ Id. at 878-890.

¹² Id. at 34-35; 892-898.

¹³ Id. at 900-956.

¹⁴ Id. at 35.

¹⁵ Id. at 36-37.

¹⁶ Id. at 37-38.

¹⁷ Id. at 38.

¹⁸ Id. at 39.

Feeling aggrieved, the City Government of Pasay filed the instant petition, alleging reversible error committed by the CA in not finding grave abuse of discretion on the part of the RTC in issuing the writ of preliminary mandatory injunction and denying the motion for the dissolution of the writ.¹⁹

The petition is unmeritorious, and consequently must be denied.

The petition is anchored on the supposed “improperly and illegally issued excavation permit.”²⁰ According to the City Government of Pasay, MERALCO had failed to obtain a certificate of no objection from the City Council and approved zoning clearance from the Pasay City Planning and Development Office, which are required by Ordinance 4187. Thus, the excavation permit should not have been issued by the City Engineer.²¹

The RTC was of the view, and the CA agreed, that electrical poles are not covered by Ordinance 4187 inasmuch as it specifically mentioned only the following in its first whereas clause: excavation of the ground for laying of water, gas, sewer x x x and the construction, repair and maintenance of public drains, sewers, cesspools, tunnels and similar structures.²² On the other hand, in maintaining that the excavations done by MERALCO are covered by the ordinance, the City Government of Pasay argues that what is controlling is not the aforementioned whereas clause, but the definition of “excavation” in the ordinance which is “any form of digging in the street of Pasay City.”²³ The issue in this case thus essentially arose from the differing interpretations on the coverage of Ordinance 4187. To emphasize, however, the interpretation of the ordinance is not the office of this appeal, which is limited in function to the resolution of the lone issue of whether the CA erred in finding no grave abuse of discretion on the part of the RTC.

We hold that the CA was not in error.

Granting, for the sake of argument, that the RTC erred in its interpretation of Ordinance 4187, this does not by itself warrant a finding of grave abuse of discretion on its part. There must be a showing of clear abuse of authority on the part of the RTC that is so

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¹⁹ Id. at 12.

²⁰ Id. at 14.

²¹ Id.

²² Id. at 38; 47.

²³ Id. at 18.

severe as to warrant the corrective action of the appellate court. In *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*²⁴ We held:

Grave abuse of discretion has a precise meaning in remedial law. It is not mere abuse of discretion but must be grave “as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.” In more concrete terms, not every error committed by a tribunal amounts to grave abuse of discretion. **A misappreciation of the facts or a misapplication of the law does not, by itself, warrant the filing of a special civil action for certiorari. There must be a clear abuse of the authority vested in a tribunal. This abuse must be so serious and so grave that it warrants the interference of the court to nullify or modify the challenged action and to undo the damage done.**²⁵ (emphasis supplied)

The evidence adduced by the City Government of Pasay falls short of the quantum required to establish grave abuse of discretion on the part of the RTC.

Moreover, if indeed MERALCO’s excavation works are covered by Ordinance 4187, and the excavation permit was erroneously issued for MERALCO’s failure to comply with some requirements of the ordinance, the remedy of the City Government of Pasay is not the suspension of the excavation permit, but the remedy provided in the ordinance itself, to wit:

Section 7. PENALTY CLAUSE. – Any person, individual and entity ignoring the above requirements shall be imprisoned for One (1) Year and [imposed] a fine of Ten Thousand (Php10,000.00) Pesos. Moreover, a government official or employee who issued permits, certificate in violation of this ordinance shall be subjected to administrative suspension of thirty (30) days without pay and without prejudice to any criminal [sanctions] thereof.²⁶

In view of the above considerations, We agree with the CA that the challenged RTC orders were not tainted with grave abuse of discretion.

Significantly, the petition must not only fail on substantive grounds, but also on the procedural front.

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²⁴ 820 Phil. 235 (2017).

²⁵ Id. at 247.

²⁶ *Rollo*, p. 48.

At the time the CA promulgated its assailed decision, the writ of preliminary mandatory injunction had been implemented, and MERALCO had already completed the installation of the sub-transmission lines.²⁷ In other words, the case has become moot. Even if the Court finds basis to rule in favor of the City Government of Pasay, that would have been inconsequential as the act it seeks to restrain, *i.e.*, the excavations within the areas of its jurisdiction, had already been accomplished.

A moot and academic case is one that ceases to present a justiciable controversy, so that a declaration on the issue would be of no practical use or value.²⁸ Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness.²⁹

WHEREFORE, the petition is **DENIED**. The Decision dated November 4, 2013 issued by the Court of Appeals in CA-G.R. SP. No. 116993 is **AFFIRMED**.

SO ORDERED.” *Lopez, J., J., designated Additional Member per Raffle dated May 12, 2021 vice Carandang, J.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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²⁷ Id. at 33; 742-743.

²⁸ *Banco Filipino Savings and Mortgage Bank v. Hon. Tuazon, Jr.*, 469 Phil. 79, 85-86 (2004).

²⁹ *Prof. David v. Pres. Macapagal-Arroyo*, 522 Phil. 705, 754 (2006).



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