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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUL 3 0 2018

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

THE CITY GOVERNMENT OF BAGUIO represented by MAURICIO G. DOMOGAN, City Mayor, CITY BUILDINGS AND ARCHITECTURE OFFICE represented by OSCAR FLORES, and PUBLIC ORDER AND SAFETY DIVISION represented by FERNANDO MOYAEN and CITY DEMOLITION TEAM represented by NAZITA BAÑEZ,
Petitioners,

- versus -

ATTY. BRAIN MASWENG, Regional Hearing Officer-National Commission on Indigenous Peoples–Cordillera Administrative Region, MAGDALENA GUMANGAN, MARION T. POOL, LOURDES C. HERMOGENO, JOSEPH LEGASPI, JOSEPH BASATAN, MARCELINO BASATAN, JOSEPHINE LEGASPI, LANSIGAN BAWAS, ALEXANDER AMPAGUEY, JULIO DALUYEN, SR., CONCEPCION PADANG and CARMEN PANAYO,
Respondents.

G.R. No. 195905

Present:

VELASCO, JR., *J.*
Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

July 4, 2018

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DECISION

MARTIRES, *J.*:

This petition for review on certiorari seeks to reverse and set aside the 5 August 2010 Decision[1] and 31 January 2011 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 110598.

The present controversy stemmed from the various orders issued by the National Commission on Indigenous Peoples-Cordillera Administrative Region *(NCIP-CAR)* in NCIP Case Nos. 29-CAR-09 and 31-CAR-09.

THE FACTS

The Petitions

Private respondents Magdalena Gumangan, Marion T. Pool, Lourdes C. Hermogeno, Bernardo Simon, Joseph Legaspi, Joseph Basatan, Marcelino Basatan, Josephine Legaspi, and Lansigan Bawas *(Gumangan petition)* are the petitioners in NCIP Case No. 29-CAR-09. In their petition,[3] filed on 23 July 2009, they prayed that their ancestral lands in the Busol Forest Reserve be identified, delineated, and recognized and that the corresponding Certificate of Ancestral Land Title *(CALT)* be issued. In addition, the Gumangan petition sought to restrain the City Government of Baguio, et al., *(petitioners)* from enforcing demolition orders and to prevent the destruction of their residential houses at the Busol Forest Reserve pending their application for identification of their ancestral lands before the NCIP Ancestral Domains Office.

On the other hand, private respondents Alexander Ampaguey, Sr., Julio Daluyen, Sr., Concepcion Padang, and Carmen Panayo *(Ampaguey petition)* are the petitioners in NCIP Case No. 31-CAR-09. In their petition,[4] filed on 23 July 2009, they prayed that the petitioners be enjoined from enforcing the demolition orders affecting their properties inside the Busol Forest Reserve. The Ampaguey Petition claimed that they have pending applications for their ancestral land claims before the NCIP.

Both the Gumangan and Ampaguey petitions assail that petitioners have no right to enforce the demolition orders and to evict them from their properties. They aver that their claims over their ancestral lands are protected and recognized under Republic Act *(R.A.)* No. 8371 or the Indigenous Peoples Rights Act of 1997 *(IPRA)*.

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1 *Rollo*, pp. 60-80.
2 Id. at 81-82.
3 CA *rollo*, pp. 517-527.
4 Id. at 76-83.

Proceedings before the NCIP-CAR

In his 27 July 2009 Order,[5] public respondent Atty. Brain Masweng *(Atty. Masweng)*, NCIP-CAR Hearing Officer, issued a 72-Hour Temporary Restraining Order *(TRO)* on the Gumangan petition. On the same date, he issued another order[6] for a 72-Hour TRO on the Ampaguey petition. On 14 August 2009, Atty. Masweng issued a writ of preliminary injunction in NCIP Case Nos. 29-CAR-09[7] and 31-CAR-09.[8]

Aggrieved, petitioners filed a petition for certiorari[9] before the CA assailing the TRO and preliminary injunction issued by Atty. Masweng in the above NCIP case.

The CA Ruling

In its 5 August 2010 decision, the CA dismissed petitioners' petition for certiorari for being procedurally flawed because they did not file a motion for reconsideration before the NCIP. The appellate court elucidated that the present petition constituted forum shopping because petitioners had a pending motion to dismiss before the NCIP. Further, the CA ruled that the NCIP had the power to issue the injunctive relief noting that the NCIP did not act with grave abuse of discretion because the issuances were in accordance with law. It ruled:

> **WHEREFORE**, the petition is **DISMISSSED**. The assailed issuances **STAND**. Costs against Petitioners. [10]

Petitioners moved for reconsideration, but the same was denied by the CA in its assailed 31 January 2011 resolution.

Hence, this present petition raising the following:

ISSUES

I.

WHETHER THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION FOR CERTIORARI FOR BEING PROCEDURALLY DEFECTIVE; AND

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5 Id. at 430-432.
6 *Rollo*, pp. 107-108.
7 Id. at 105-106.
8 Id. at 129-130.
9 CA *rollo*, pp. 3-26.
10 *Rollo*, pp. 48-49.

II.

WHETHER PRIVATE RESPONDENTS WERE ENTITLED TO INJUNCTIVE RELIEF.

THE COURT'S RULING

The petition is meritorious.

Before proceeding to the merits of the case, a resolution of certain procedural matters is in order.

Case mooted due to supervening events

At the onset, the present case has been rendered moot and academic. A moot and academic case is one that ceases to present a justifiable controversy by virtue of supervening events, so that declaration thereon would be of no practical value.[11] In *City Government of Baguio v. Atty. Masweng (contempt case)*,[12] the Court set aside the provisional remedies Atty. Masweng issued in NCIP Case Nos. 29-CAR-09 and 31-CAR-09 after he was found guilty of indirect contempt, to wit:

> In this case, respondent was charged with indirect contempt for issuing the subject orders enjoining the implementation of demolition orders against illegal structures constructed on a portion of the Busol Watershed Reservation located at Aurora Hill, Baguio City.
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> x x x x
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> The said orders clearly contravene our ruling in G.R. No. 180206 that those owners of houses and structures covered by the demolition orders issued by petitioner are not entitled to the injunctive relief previously granted by respondent.
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> x x x x
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> As mentioned earlier, the Court while recognizing that the NCIP is empowered to issue temporary restraining orders and writs of preliminary injunction, nevertheless ruled that petitioners in the injunction case seeking to restrain the implementation of the subject demolition order are not entitled to such relief. Petitioner City Government of Baguio in issuing the demolition advices are simply enforcing the previous demolition orders against the same occupants or claimants or their agents and successors-in-interest, only to be thwarted anew by the injunctive orders and writs issued by respondent. Despite the Court's pronouncements in G.R. No. 180206 that no such clear legal right exists in favor of those

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[11] *Gunsi, Sr. v. Commission on Elections*, 599 Phil. 223, 229 (2009).

[12] 727 Phil. 540 (2014).

> occupants or claimants to restrain the enforcement of the demolition orders issued by petitioner, and hence there remains no legal impediment to bar their implementation, respondent still issued the temporary restraining orders and writs of preliminary injunction. x x x
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> x x x x
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> **WHEREFORE**, the petition for contempt is **GRANTED**. The assailed Temporary Restraining Order dated July 27, 2009, Order dated July 31, 2009, and Writ of Preliminary Injunction in NCIP Case No. 31-CAR-09, and Temporary Restraining Order dated July 27, 2009, Order dated July 31, 2009 and Writ of Preliminary Injunction in NCIP Case No. 29-CAR-09 are hereby all **LIFTED and SET ASIDE**.[13]

As a general rule, the Court no longer entertains petitions which have been rendered moot. After all, the decision would have no practical value. Nevertheless, there are exceptions where the Court resolves moot and academic cases, *viz:* (a) there was a grave violation of the Constitution; (b) the case involved a situation of exceptional character and was of paramount public interest; (3) the issues raised required the formulation of controlling principles to guide the Bench, the Bar, and the public; and (4) the case was capable of repetition yet evading review.[14]

In the case at bar, there are exceptions warranting an affirmative action from the Court. The case definitely involves paramount public interest as it pertains to the Busol Water Reserve, a source of basic necessity of the people of Baguio and other neighboring communities. In addition, the present issues are likely to be repeated especially considering the other cases involving land claimants over the Busol Water Reserve.

Exceptions to the requirement of a motion for reconsideration in petitions for certiorari

A petition for certiorari is resorted to whenever a tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[15] It is an extraordinary remedy available only when there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[16] In other words, *certiorari* is a solution of last resort availed of after all possible legal processes have been exhausted.

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13 Id. at 549-555.

14 *Timbol v. Commission on Elections*, 754 Phil. 578, 585 (2015) citing *ARARO Party-List v. Commission on Elections*, 723 Phil. 160, 184 (2013).

15 Rules of Court, Rule 65, Section 1.

16 *Bergonia v. CA*, 680 Phil. 334, 339 (2012).

Thus, it is axiomatic that a motion for reconsideration is a condition precedent to the filing of a petition for certiorari.[17] This is so considering that the said motion is an existing remedy under the rules for a party to assail a decision or ruling adverse to it. Nonetheless, the rule requiring a motion for reconsideration to be filed before a petition for certiorari is available admits of exception. In *Republic of the Philippines v. Pantranco North Express, Inc.*,[18] the Court recognized the following exceptions:

> 1. Where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
> 2. Where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
> 3. Where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or the petitioner or the subject matter of the petition is perishable;
> 4. Where, under the circumstances, a motion for reconsideration would be useless;
> 5. Where the petitioner was deprived of due process and there is extreme urgency for relief;
> 6. Where, in a criminal case, a relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
> 7. Where the proceedings in the lower court are a nullity for lack of due process;
> 8. Where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and
> 9. Where the issue raised is one purely of law or public interest is involved.[19]

The Court finds that exceptions exist to warrant petitioners' direct resort to a petition for certiorari before the CA notwithstanding its lack of a motion for reconsideration filed before the NCIP. *First*, the issues had been duly raised before the NCIP especially considering that petitioner had presented similar arguments or opposition from the TRO initially issued by the NCIP until the grant of the writ of preliminary injunction. *Second*, there is urgency in the petition because petitioners seek to implement its demolition orders with the goal of preserving the Busol Forest Reserve, Baguio's primary forest and watershed. It cannot be gainsaid that any delay may greatly prejudice the government as the Busol Forest Reserve may be further compromised. *Third*, the preservation of the Busol Forest Reserve involves public interest as it would have a significant impact on the water supply for the City of Baguio.

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[17] *Castro v. Guevarra*, 686 Phil. 1125, 1137 (2012).

[18] 682 Phil. 186 (2012).

[19] Id. at 194.

No forum shopping if different reliefs are prayed for

The CA also found petitioners' petition for certiorari dismissible for violating the rule on forum shopping. It opined that a ruling on the said petition for certiorari would amount to *res judicata* in view of the petitioners' motion to dismiss filed before the NCIP.

Forum shopping exists when a party, against whom an adverse judgment or order has been rendered in one forum, seeks a favorable opinion in another forum, other than by appeal or special civil action for certiorari—it is the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[20] The following are the elements of forum shopping: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[21]

The petition for certiorari filed before the CA did not amount to forum shopping despite the existence of the motion to dismiss before the NCIP. The two actions involved different reliefs based on different facts. In their petition, petitioners questioned the issuance of provisional remedies by the NCIP and prayed that these be dismissed for lack of a clear legal right to be protected. On the other hand, the motion to dismiss filed before the NCIP sought the dismissal of the main complaint of private respondents for the issuance of a permanent injunction to enjoin the demolition orders and/or to recognize their purported native title over the land involved.

In addition, judgment rendered in the petition would not amount to *res judicata* with respect to the motion to dismiss, and vice versa. To invoke *res judicata*, the following elements must concur: (a) the judgment sought to bar the new action must be final; (b) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (c) the disposition of the case must be a judgment on the merits; and (d) there must be, as between the first and second actions, identity of parties, subject matter and causes of action.[22] As stated, the petition for certiorari assailed the propriety of the issuance of provisional remedies while the motion to dismiss attacked the principal action of private respondents. Evidently, the petition for certiorari and the motion to dismiss had different causes of action

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20 *Cruz v. Caraos*, 550 Phil. 98, 107 (2007).

21 *Heirs of Sotto v. Palicte*, 726 Phil. 651, 654 (2014).

22 *Republic of the Philippines v. Yu*, 519 Phil. 391, 396 (2006).

especially since the grant or denial of the provisional remedies does not necessarily mean that the main action would have the same conclusion.

Having settled the procedural matters, we now address the merits of the case.

Clear legal right and irreparable injury

A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts.[23] It is an equitable and extraordinary peremptory remedy to be exercised with caution as it affects the parties' respective rights.[24]

Under Section 3, Rule 58 of the Rules of Court, a preliminary injunction may be granted when it is established that: (a) the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; (b) the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant ; or (c) a party, court, agency or a person is doing, threatening or attempting to do; or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding and tending to render the judgment ineffectual.

In other words, the following requisites must concur before a preliminary injunction is issued: (1) the invasion of a right sought to be protected is material and substantial; (2) the right of the complainant is clear and unmistakable; and (3) there is an urgent and paramount necessity for the writ to prevent serious damage.[25]

Before the preventive writ may be issued, first and foremost there must be a clear showing by the complainant that there is an existing right to be protected, a clear and unmistakable right at that.[26] Thus, it is incumbent upon private respondents to establish that their rights over the land in the Busol Forest Reserve are unequivocal and indisputable. They, however, admit that their claims for recognition are still pending before the NCIP; they are but mere expectations—short of the required present and

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23 Rules of Court, Rule 58, Section 1.

24 *China Banking Corporation v. Ciriaco*, 690 Phil. 480, 486 (2012).

25 *Lukang v. Pagbilao Development Corporation*, 728 Phil. 608, 617-618 (2014).

26 *Transfield Philippines, Inc. v. Luzon Hydro Corporation*, 485 Phil. 699, 726 (2004).

unmistakable right for the grant of the issuance of the provisional remedy of injunction.[27]

Private respondents also bewail that it would be more prudent that the injunctive writs be issued to prevent the baseless or unnecessary demolition of their house should their land claims be ultimately recognized. While the Court understands their predicament, there is still no basis for the issuance of the injunctive writs because it can be compensable through the award of damages. A clear and unmistakable right is not enough to justify the issuance of a writ of preliminary injunction as there must be a showing that the applicant would suffer irreparable injury. Thus, the Court in *Power Sites and Signs, Inc. v. United Neon*[28] ruled:

> It is settled that a writ of preliminary injunction should be issued only to prevent grave and irreparable injury, that is, injury that is actual, substantial and demonstrable. Here, there is no irreparable injury as understood in law. Rather, the damages alleged by the petitioner, namely, immense loss in profit and possible damage claims from clients and the cost of the billboard which is a considerable amount of money is easily quantifiable, and certainly does not fall within the concept of irreparable damage or injury as described in Social Security Commission v. Bayona:
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>> Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy. An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement. An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof.[29] (emphasis omitted)

More importantly, their continued occupation absent any clear legal right cannot be countenanced because of the threat it poses to the Busol Water Reserve. In *Province of Rizal v. Executive Secretary*,[30] the Court emphasized the importance of preserving watersheds, to wit:

> This brings us to the second self-evident point. **Water is life, and must be saved at all costs.** In *Collado v. Court of Appeals*, we had occasion to reaffirm our previous discussion in *Sta. Rosa Realty*

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27 *The City Mayor of Baguio v. Masweng*, 625 Phil. 179, 183 (2010).
28 620 Phil. 205 (2009).
29 Id. at 219.
30 513 Phil. 557 (2005).

> *Development Corporation v. Court of Appeals*, on the primordial importance of watershed areas, thus: **The most important product of a watershed is water, which is one of the most important human necessities**. The protection of watersheds ensures an adequate supply of water for future generations and the control of flash floods that not only damage property but also cause[s] loss of lives. <u>Protection of watersheds is an intergenerational responsibility that needs to be answered now</u>.[31] (emphasis and underlining supplied)

While the Court does not discount the possible loss private respondents may suffer should their land claims be recognized with finality, still it bears reiterating that they failed to show that they are entitled to an injunctive relief. In summary, private respondents do not have a clear and unmistakable legal right because their land claims are still pending recognition and any loss or injury they may suffer can be compensable by damages. To add, their occupation of the Busol Water Reserve poses a continuing threat of damaging the preservation or viability of the watershed. Any danger to the sustainability of the Busol Water Reserve affects not only individuals or families inside the watershed but also the entire community relying on it as a source of a basic human necessity—water. Furthermore, unlike the injury private respondents may suffer, any damage to the Busol Water Reserve is irreversible and may not only affect the present generation but also those to come.

Stare decisis vis-à-vis res judicata

In its assailed decision, the CA ruled that the NCIP did not act with grave abuse of discretion because its actions were in accordance with law as it complied with the IPRA and its implementing rules and regulations. Still, it must be remembered that judicial decisions form part of the law of the land.[32]

In *The City Government of Baguio v. Atty. Masweng (City Government of Baguio)*,[33] the Court explained that Proclamation No. 15 is not a definitive recognition of land claims over portions of the Busol Forest Reserve, to wit:

> The foregoing provision indeed states that Baguio City is governed by its own charter. Its exemption from the IPRA, however, cannot ipso facto be deduced because the law concedes the validity of prior land rights recognized or acquired through any process before its effectivity. The IPRA demands that the city's charter respect the validity of these recognized land rights and titles.

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[31] Id. at 582-583.

[32] Article 8 of the Civil Code.

[33] 597 Phil. 668 (2009).

> The crucial question to be asked then is whether private respondents' ancestral land claim was indeed recognized by Proclamation No. 15, in which case, their right thereto may be protected by an injunctive writ. After all, before a writ of preliminary injunction may be issued, petitioners must show that there exists a right to be protected and that the acts against which injunction is directed are violative of said right.
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> Proclamation No. 15, however, does not appear to be a definitive recognition of private respondents ancestral land claim. The proclamation merely identifies the Molintas and Gumangan families, the predecessor-in-interest of private respondents, as claimants of a portion of the Busol Forest Reservation but does not acknowledge vested rights over the same.
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> x x x x
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> The fact remains, too, that the Busol Forest Reservation was declared by the Court as inalienable in *Heirs of Gumangan v. Court of Appeals*. The declaration of the Busol Forest Reservation as such precludes its conversion into private property. Relatedly, the courts are not endowed with jurisdictional competence to adjudicate forest lands.[34]

In *City Government of Baguio*, it was recognized that the NCIP is empowered to issue TROs and writs of injunction. Nevertheless, the said case ruled that therein respondents were not entitled to an injunctive relief because they failed to prove their definite right over the properties they claimed. The circumstances in *City Government of Baguio* and the present case are similar. In both cases, the claimants principally rely on Proclamation No. 15 as basis for their ancestral land claims in the Busol Forest Reserve. Unfortunately, it was ruled that the said proclamation is not a definitive recognition of their ancestral land claims as it only identifies their predecessors-in-interest as claimants.

Thus, it is quite unfortunate that the CA found that the actions of the NCIP were in accordance with law. A cursory reading of the decision indicates that it merely relied on the applicable statute without regard to the doctrines and principles settled by the Court. The pronouncements in *City Government of Baguio* should have put the appellate court on notice that the actions of the NCIP were baseless because it settled that claimants of lands in the Busol Water Reserve cannot rely on anticipatory claims for the issuance of the preventive writ. It befuddles the Court why the CA did not bother to address the said ruling in its discussions and perfunctorily relied on the statute alone.

On the other hand, respondents argue that petitioners erred in relying on *City Government of Baguio* in that *res judicata* did not arise considering that they were not parties to the said case and that only parties may be bound by the decision.

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[34] Id. at 678-679.

Nevertheless, while *res judicata* may be inapplicable, the ruling in *City Government of Baguio* still finds relevance under *stare decisis*. The said doctrine states that when the Court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases where facts are substantially the same, regardless whether the parties and property are the same.[35] *Stare decisis* differs from *res judicata* in that the former is based upon the legal principle or rule involved while the latter is based upon the judgment itself.[36]

Thus, the Court in *The Baguio Regreening Movement, Inc. v. Masweng (Baguio Regreening)*[37] held:

> Lastly, however, this Court ruled that although the NCIP has the authority to issue temporary restraining orders and writs of injunction, it was not convinced that private respondents were entitled to the relief granted by the Commission. Proclamation No. 15 does not appear to be a definitive recognition of private respondents' ancestral land claim, as it merely identifies the Molintas and Gumangan families as claimants of a portion of the Busol Forest Reservation, but does not acknowledge vested rights over the same. Since it is required before the issuance of a writ of preliminary injunction that claimants show the existence of a right to be protected, this Court, in G.R. No. 180206, ultimately granted the petition of the City Government of Baguio and set aside the writ of preliminary injunction issued therein.
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> In the case at bar, petitioners and private respondents present the very same arguments and counter-arguments with respect to the writ of injunction against fencing of the Busol Watershed Reservation. The same legal issues are thus being litigated in G.R. No. 180206 and in the case at bar, except that different writs of injunction are being assailed. In both cases, petitioners claim (1) that Atty. Masweng is prohibited from issuing temporary restraining orders and writs of preliminary injunction against government infrastructure projects; (2) that Baguio City is beyond the ambit of the IPRA; and (3) that private respondents have not shown a clear right to be protected. Private respondents, on the other hand, presented the same allegations in their Petition for Injunction, particularly the alleged recognition made under Proclamation No. 15 in favor of their ancestors. While *res judicata* does not apply on account of the different subject matters of the case at bar and G.R. No. 180206 (they assail different writs of injunction, albeit issued by the same hearing officer), we are constrained by the principle of *stare decisis* to grant the instant petition.[38]

Like the private respondents in *City Government of Baguio* and in *Baguio Regreening*, herein claimants principally rely on Proclamation No. 15 as basis for their ancestral land claims in the Busol Forest Reserve. Thus, the Court is constrained to similarly rule that the injunctive relief issued in

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[35] *Ty v. Banco Filipino Savings and Mortgage Bank*, 689 Phil. 603 (2012).
[36] Id. 613.
[37] *The Baguio Regreening Movement, Inc. v. Masweng*, 705 Phil. 103 (2013).
[38] Id. at 117-118.

the present case are without basis because the applicants failed to establish a clear and legal right. After all, it has been settled that Proclamation No. 15 is not a definite recognition of their ancestral land claims.

It is noteworthy that in the *contempt case*, Atty. Masweng was cited for indirect contempt for issuing TROs and preliminary injunctions in NCIP Case Nos. 29-CAR-09 and 31-CAR-09. He was found in indirect contempt because the Court had already ruled that the occupants in the Busol Water Reserve had no clear legal right warranting the issuance of preventive remedies. In the present case, the preventive writs issued in NCIP Case Nos. 29-CAR-09 and 31-CAR-09 themselves are being questioned. Thus, the Court had, on more than one occasion, found occupants of the Busol Watershed Reservation not entitled to the preventive writ for lack of a clear legal right, considering that their recognition claims were still pending before the NCIP.

Taking into account all the cases involving land claims over the Busol Water Reserve, it is settled that Proclamation No. 15 and the IPRA, notwithstanding, provisional remedies such as TROs and writs of preliminary injunction should not *ipso facto* be issued to individuals who have ancestral claims over Busol. It is imperative that there is a showing of a clear and unmistakable legal right for their issuance because a pending or contingent right is insufficient. Nevertheless, the grant or denial of these provisional remedies should not affect their ancestral land claim as the applicants are not barred from proving their rights in an appropriate proceeding.

WHEREFORE, the petition is **GRANTED**. The 5 August 2010 Decision and 31 January 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 110598 are **REVERSED**. The Temporary Restraining Order and the Writ of Preliminary Injunction issued by the National Commission on Indigenous Peoples–Cordillera Administrative Region in NCIP Case Nos. 29-CAR-09 and 31-CAR-09 are hereby **SET ASIDE**.

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 3 0 2018