



Republic of the Philippines
Supreme Court
 Manila

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SUPREME COURT OF THE PHILIPPINES
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**MARK ANTHONY V. ZABAL,
 THITING ESTOSO JACOSALEM,
 AND ODON S. BANDIOLA,**
Petitioners,

G.R. No. 238467

Present:

**BERSAMIN, C.J.,
 CARPIO,
 PERALTA,
 DEL CASTILLO,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA,
 CAGUIOA,
 REYES, A., JR.,
 GESMUNDO,
 REYES, J. JR.,
 HERNANDO, and
 CARANDANG, JJ.**

- versus -

**RODRIGO R. DUTERTE, President
 of the Republic of the Philippines;
 SALVADOR C. MEDIALDEA,
 Executive Secretary; and
 EDUARDO M. AÑO, [Secretary] of
 the Department of Interior and
 Local Government.**
Respondents.

Promulgated:
 February 12, 2019.

X-----X

DECISION

DEL CASTILLO, J.:

Paradise is a place of bliss, felicity, and delight.¹ For Filipinos and foreign nationals alike, Boracay - a small island in Malay, Aklan, with its palm-fringed, pristine white sand beaches, azure waters, coral reefs, rare seashells,² and a lot more to offer,³ - is indeed a piece of paradise. Unsurprisingly, Boracay is one of the country's prime tourist destinations. However, this island-paradise has been disrespected, abused, degraded, over-used, and taken advantage of by both locals and tourists. Hence, the government gave Boracay its much-needed respite and rehabilitation.

¹ <https://www.merriam-webster.com/dictionary/paradise>; last visited on January 28, 2019.

² *Malay, Our Home...Your Destination*, <http://aklan.gov.ph/tourism/malay/>; last visited on January 28, 2019.

³ The Department of Tourism's feature on Boracay posted in its website cites that aside from being a tropical heaven, Boracay also boasts of diverse culinary fare, water fun activities, beach combing, nightlife, bat caves, and its Kar-Tir Seashell museum; see <http://www.experiencephilippines.org/tourism/destinations-tourism/boracay-department-of-tourism/>, last visited on January 28, 2019.

However, the process by which the rehabilitation was to be implemented did not sit well with petitioners, hence, the present petition.

The Case

Before this Court is a Petition for Prohibition and Mandamus with Application for Temporary Restraining Order, Preliminary Injunction, and/or Status *Quo Ante* Order filed by petitioners Mark Anthony V. Zabal (Zabal), Thiting Estoso Jacosalem (Jacosalem), and Odon S. Bandiola (Bandiola) against respondents President Rodrigo R. Duterte (President Duterte), Executive Secretary Salvador C. Medialdea, and Secretary Eduardo M. Año of the Department of Interior and Local Government (DILG).

The Parties

Zabal and Jacosalem are both residents of Boracay who, at the time of the filing of the petition, were earning a living from the tourist activities therein. Zabal claims to build sandcastles for tourists while Jacosalem drives for tourists and workers in the island. While not a resident, Bandiola, for his part, claims to occasionally visit Boracay for business and pleasure. The three base their *locus standi* on direct injury and also from the transcendental importance doctrine.⁴ Respondents, on the other hand, are being sued in their capacity as officials of the government.

The Facts

Claiming that Boracay has become a cesspool, President Duterte first made public his plan to shut it down during a business forum held in Davao sometime February 2018.⁵ This was followed by several speeches and news releases stating that he would place Boracay under a state of calamity. True to his words, President Duterte ordered the shutting down of the island in a cabinet meeting held on April 4, 2018. This was confirmed by then Presidential Spokesperson Harry L. Roque, Jr. in a press briefing the following day wherein he formally announced that the total closure of Boracay would be for a maximum period of six months starting April 26, 2018.⁶



⁴ Rollo, p.5.

⁵ Duterte wants to close 'cesspool' Boracay, <http://www.pna.gov.ph/articles/1024807>; last visited on January 28, 2019.

⁶ Palace: Duterte approves 6-month total closure of Boracay, https://pcoo.gov.ph/news_releases/palace-duterte-approves-6-month-total-closure-of-boracay/; last visited on January 28, 2019.

Following this pronouncement, petitioners contend that around 630 police and military personnel were readily deployed to Boracay including personnel for crowd dispersal management.⁷ They also allege that the DILG had already released guidelines for the closure.⁸

Petitioners claim that ever since the news of Boracay's closure came about, fewer tourists had been engaging the services of Zabal and Jacosalem such that their earnings were barely enough to feed their families. They fear that if the closure pushes through, they would suffer grave and irreparable damage. Hence, despite the fact that the government was then yet to release a formal issuance on the matter,⁹ petitioners filed the petition on April 25, 2018 praying that:

- (a) Upon the filing of [the] petition, a TEMPORARY RESTRAINING ORDER (TRO) and/or a WRIT OF PRELIMINARY PROHIBITORY INJUNCTION be immediately issued RESTRAINING and/or ENJOINING the respondents, and all persons acting under their command, order, and responsibility from enforcing a closure of Boracay Island or from banning the petitioners, tourists, and non-residents therefrom, and a WRIT OF PRELIMINARY MANDATORY INJUNCTION directing the respondents, and all persons acting under their command, order, and responsibility to ALLOW all of the said persons to enter and/or leave Boracay Island unimpeded;
- (b) In the alternative, if the respondents enforce the closure after the instant petition is filed, that a STATUS QUO ANTE Order be issued restoring and maintaining the condition prior to such closure;

⁷ *Rollo*, p. 9.

⁸ The guidelines allegedly provide as follows:

1. **No going beyond Jetty Port.** Identified tourists will not be allowed into the island and will be stopped at the Jetty Port in Malay, Aklan.
2. **No ID, no entry.** Residents/workers/resort owners will be allowed entry into the island subject to the presentation of identification cards specifying a residence in Boracay. All government-issued IDs will be recognized. Non-government IDs are acceptable as long as they are accompanied by a barangay certification of residency.
3. **Swimming for locals only.** Generally, swimming shall not be allowed anywhere on the island. However, residents may be allowed to swim only at Angol Beach in station 3 from 6 am to 5 pm.
4. **One condition for entry.** No visitors of Boracay residents shall be allowed entry, except under emergency situations, and with the clearance of the security committee composed of DILG representative, police, and local government officials.
5. **Journalists need permission to cover.** Media will be allowed entry subject to **prior approval** from the Department of Tourism, with a definite duration and limited movement.
6. **No floating structures.** No floating structures shall be allowed up to 15 kilometers from the shoreline.
7. **Foreign residents to be checked.** The Bureau of Immigration will revalidate the papers of foreigners who have found a home in Boracay.
8. **One entry, one exit point.** There will only be one transportation point to Boracay Island. Authorities have yet to decide where.

⁹ *Rollo*, p. 11.

- (c) After proper proceedings, a judgment be rendered PERMANENTLY RESTRAINING and/or ENJOINING the respondents, and all persons acting under their command, order, and responsibility from enforcing a closure of Boracay Island or from banning the petitioners, tourists, and non-residents therefrom, and further DECLARING the closure of Boracay Island or the ban against petitioners, tourists, and non-residents therefrom to be UNCONSTITUTIONAL.

Other reliefs just and equitable under the premises are similarly prayed for.¹⁰

On May 18, 2018, petitioners filed a Supplemental Petition¹¹ stating that the day following the filing of their original petition or on April 26, 2018, President Duterte issued Proclamation No. 475¹² formally declaring a state of calamity in Boracay and ordering its closure for six months from April 26, 2018 to October 25, 2018. The closure was implemented on even date. Thus, in addition to what they prayed for in their original petition, petitioners implore the Court to declare as unconstitutional Proclamation No. 475 insofar as it orders the closure of Boracay and ban of tourists and non-residents therefrom.¹³

In the Resolutions dated April 26, 2018¹⁴ and June 5, 2018,¹⁵ the Court required respondents to file their Comment on the Petition and the Supplemental Petition, respectively. Respondents filed their Consolidated Comment¹⁶ on July 30, 2018 while petitioners filed their Reply¹⁷ thereto on October 12, 2018.

On October 26, 2018, Boracay was reopened to tourism.

Petitioners' Arguments

Petitioners state that a petition for prohibition is the appropriate remedy to raise constitutional issues and to review and/or prohibit or nullify, when proper, acts of legislative and executive officials. An action for *mandamus*, on the other hand, lies against a respondent who unlawfully excludes another from the enjoyment of an entitled right or office. Justifying their resort to prohibition and *mandamus*, petitioners assert that (1) this case presents constitutional issues, *i.e.*, whether President Duterte

¹⁰ Id. at 28-29.

¹¹ Id. at 62-102.

¹² Id. at 103-106.

¹³ Id. at 96.

¹⁴ Id. at 54-55.

¹⁵ Id. at 111-112.

¹⁶ Id. at 141-201.

¹⁷ Id. at 235-287.

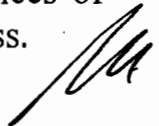
acted within the scope of the powers granted him by the Constitution in ordering the closure of Boracay and, whether the measures implemented infringe upon the constitutional rights to travel and to due process of petitioners as well as of tourists and non-residents of the island; and, (2) President Duterte exercised a power legislative in nature, thus unlawfully excluding the legislative department from the assertion of such power.

As to the substantive aspect, petitioners argue that Proclamation No. 475 is an invalid exercise of legislative powers. They posit that its issuance is in truth a law-making exercise since the proclamation imposed a restriction on the right to travel and therefore substantially altered the relationship between the State and its people by increasing the former's power over the latter. Simply stated, petitioners posit that Proclamation No. 475 partakes of a law the issuance of which is not vested in the President. As such, Proclamation No. 475 must be struck down for being the product of an invalid exercise of legislative power.

Likewise, petitioners argue that Proclamation No. 475 is unconstitutional for infringing on the constitutional rights to travel and to due process.

Petitioners point out that although Section 6, Article III of the Constitution explicitly allows the impairment of the right to travel, two conditions, however, must concur to wit: (1) there is a law restricting the said right, and (2) the restriction is based on national security, public safety or public health. For petitioners, neither of these conditions have been complied with. For one, Proclamation No. 475 does not refer to any specific law restricting the right to travel. Second, it has not been shown that the presence of tourists in the island poses any threat or danger to national security, public safety or public health.

As to the right to due process, petitioners aver that the same covers property rights and these include the right to work and earn a living. Since the government, through Proclamation No. 475, restricted the entry of tourists and non-residents into the island, petitioners claim that they, as well as all others who work, do business, or earn a living in the island, were deprived of the source of their livelihood as a result thereof. Their right to work and earn a living was curtailed by the proclamation. Moreover, while Proclamation No. 475 cites various violations of environmental laws in the island, these, for the petitioners, do not justify disregard of the rights of thousands of law-abiding people. They contend that environmental laws provide for specific penalties intended only for violators. Verily, to make those innocent of environmental transgressions suffer the consequences of the Boracay closure is tantamount to violating their right to due process.



Petitioners likewise argue that the closure of Boracay could not be anchored on police power. For one, police power must be exercised not by the executive but by legislative bodies through the creation of statutes and ordinances that aim to promote the health, moral, peace, education, safety, and general welfare of the people. For another, the measure is unreasonably unnecessary and unduly oppressive.

In their Supplemental Petition, petitioners aver that Proclamation No. 475 unduly impinges upon the local autonomy of affected Local Government Units (LGUs) since it orders the said LGUs to implement the closure of Boracay and the ban of tourists and non-residents therefrom. While petitioners acknowledge the President's power of supervision over LGUs, they nevertheless point out that he does not wield the power of control over them. As such, President Duterte can only call the attention of the LGUs concerned with regard to rules not being followed, which is the true essence of supervision, but he cannot lay down the rules himself as this already constitutes control.

Finally, petitioners state that this case does not simply revolve on the need to rehabilitate Boracay, but rather, on the extent of executive power and the manner by which it was wielded by President Duterte. To them, necessity does not justify the President's abuse of power.

Respondents' Arguments

At the outset, respondents assert that President Duterte must be dropped as party-respondent in this case because he is immune from suit. They also argue that the petition should be dismissed outright for lack of basis. According to respondents, prohibition is a preventive remedy to restrain future action. Here, President Duterte had already issued Proclamation No. 475 and in fact, the rehabilitation of the island was then already ongoing. These, according to respondents, have rendered improper the issuance of a writ of prohibition considering that as a rule, prohibition does not lie to restrain an act that is already *fait accompli*. Neither is *mandamus* proper. Section 3, Rule 65 of the Rules of Court provides that a *mandamus* petition may be resorted to when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. Respondents argue that *mandamus* will not lie in this case because they were not neglectful of their duty to protect the environment; on the contrary, they conscientiously performed what they were supposed to do by ordering the closure of Boracay to give way to its rehabilitation. Thus, to them, *mandamus* is obviously inappropriate.



At any rate, respondents contend that there is no real justiciable controversy in this case. They see no clash between the right of the State to preserve and protect its natural resources and the right of petitioners to earn a living. Proclamation No. 475 does not prohibit anyone from being gainfully employed.

Respondents moreover maintain that the petition is in the nature of a Strategic Lawsuit Against Public Participation (SLAPP) under Rule 6 of A.M. No. 09-6-8-SC or the Rules of Procedure for Environmental Cases, or a legal action filed to harass, vex, exert undue pressure or stifle any legal recourse that any person, institution or the government has taken or may take in the enforcement of environmental laws, protection of the environment or assertion of environmental rights. Respondents thus assert that the petition must be dismissed since it was filed for the said sole purpose.

With regard to the substantive aspect, respondents contend that the issuance of Proclamation No. 475 is a valid exercise of delegated legislative power, it being anchored on Section 16 of Republic Act (RA) No. 10121, otherwise known as the Philippine Disaster Risk Reduction and Management Act of 2010, or the authority given to the President to declare a state of calamity, *viz.*:

SECTION 16. *Declaration of State of Calamity.* – The National Council shall recommend to the President of the Philippines the declaration of a cluster of barangays, municipalities, cities, provinces, and regions under a state of calamity, and the lifting thereof, based on the criteria set by the National Council. The President’s declaration may warrant international humanitarian assistance as deemed necessary.

x x x x

They likewise contend that Proclamation No. 475 was issued pursuant to the President’s executive power under Section 1, Article VII of the Constitution. As generally defined, executive power is the power to enforce and administer laws. It is the power of implementing the laws and enforcing their due observance. And in order to effectively discharge the enforcement and administration of the laws, the President is granted administrative power over bureaus and offices, which includes the power of control. The power of control, in turn, refers to the authority to direct the performance of a duty, restrain the commission of acts, review, approve, reverse or modify acts and decisions of subordinate officials or units, and prescribe standards, guidelines, plans and programs. Respondents allege that President Duterte’s issuance of Proclamation No. 475 was precipitated by his approval of the recommendation of the National Disaster Risk Reduction and Management Council (NDRRMC) to place Boracay under a state of calamity. By giving



his *imprimatur*, it is clear that the President merely exercised his power of control over the executive branch.

In any case, respondents assert that the President has residual powers which are implied from the grant of executive power and which are necessary for him to comply with his duties under the Constitution as held in the case of *Marcos v. Manglapus*.¹⁸

In sum, respondents emphasize that the issuance of Proclamation No. 475 is within the ambit of the powers of the President, not contrary to the doctrine of separation of powers, and in accordance with the mechanism laid out by the Constitution.

Further, respondents dispute petitioners' allegation that Proclamation No. 475 infringes upon the rights to travel and to due process. They emphasize that the right to travel is not an absolute right. It may be impaired or restricted in the interest of national security, public safety, or public health. In fact, there are already several existing laws which serve as statutory limitations to the right to travel.

Anent the alleged violation of the right to due process, respondents challenge petitioners' claim that they were deprived of their livelihood without due process. Respondents call attention to the fact that Zabal as sandcastle maker and Jacosalem as driver are freelancers and thus belong to the informal economy sector. This means that their source of livelihood is never guaranteed and is susceptible to changes in regulations and the overall business climate. In any case, petitioners' contentions must yield to the State's exercise of police power. As held in *Ermita-Malate Hotel & Motel Operators Association, Inc. v. The Hon. City Mayor of Manila*,¹⁹ the mere fact that some individuals in the community may be deprived of their present business or of a particular mode of living cannot prevent the exercise of the police power of the State. Indeed, to respondents, private interests should yield to the reasonable prerogatives of the State for the public good and welfare, which precisely are the primary objectives of the government measure herein questioned

Lastly, respondents insist that Proclamation No. 475 does not unduly transgress upon the local autonomy of the LGUs concerned. Under RA 10121, it is actually the Local Disaster Risk Reduction Management Council concerned which, subject to several criteria, is tasked to take the lead in preparing for, responding to, and recovering from the effects of any disaster when a state of calamity is declared. In any case, the devolution of powers

¹⁸ 258 Phil. 479 (1989).

¹⁹ 128 Phil. 473 (1967).

upon LGUs pursuant to the constitutional mandate of ensuring their autonomy does not mean that the State can no longer interfere in their affairs. This is especially true in this case since Boracay's environmental disaster cannot be treated as a localized problem that can be resolved by the concerned LGUs only. The magnitude and gravity of the problem require the intervention and assistance of different national government agencies in coordination with the concerned LGUs.

As a final point, respondents aver that the bottom line of petitioners' lengthy discourse and constitutional posturing is their intention to re-open Boracay to tourists and non-residents for the then remainder of the duration of the closure and thus perpetuate and further aggravate the island's environmental degradation. Respondents posit that this is unacceptable since Boracay cannot be sacrificed for the sake of profit and personal convenience of the few.


Our Ruling

First, we discuss the procedural issues.

President Duterte is dropped as respondent in this case

As correctly pointed out by respondents, President Duterte must be dropped as respondent in this case. The Court's pronouncement in *Professor David v. President Macapagal-Arroyo*²⁰ on the non-suability of an incumbent President cannot be any clearer, viz.:

x x x Settled is the doctrine that the President, during his tenure of office or actual incumbency, may not be sued in any civil or criminal case, and there is no need to provide for it in the Constitution or law. It will degrade the dignity of the high office of the President, the Head of State, if he can be dragged into court litigations while serving as such. Furthermore, it is important that he be freed from any form of harassment, hindrance or distraction to enable him to fully attend to the performance of his official duties and functions. Unlike the legislative and judicial branch, only one constitutes the executive branch and anything which impairs his usefulness in the discharge of the many great and important duties imposed upon him by the Constitution necessarily impairs the operation of the Government.²¹



²⁰ 522 Phil. 705 (2006).

²¹ Id. at 763-764.

Accordingly, President Duterte is dropped as respondent in this case.

Propriety of Prohibition and
Mandamus

Section 2, Rule 65 of the Rules of Court provides for a petition for prohibition as follows:

SEC. 2. *Petition for prohibition.* – When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or in excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.

X X X X

“Indeed, prohibition is a preventive remedy seeking that a judgment be rendered directing the defendant to desist from continuing with the commission of an act perceived to be illegal. As a rule, the proper function of a writ of prohibition is to prevent the performance of an act which is about to be done. It is not intended to provide a remedy for acts already accomplished.”²²

Mandamus, on the other hand, is provided for by Section 3 of the same Rule 65:

SEC. 3. *Petition for mandamus.* – When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.



²² *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas*, 716 Phil. 132, 145 (2013).

x x x x

“As the quoted provision instructs, *mandamus* will lie if the tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust, or station.”²³

It is upon the above-discussed contexts of prohibition and *mandamus* that respondents base their contention of improper recourse. Respondents maintain that prohibition is not proper in this case because the closure of Boracay is already a *fait accompli*. Neither is *mandamus* appropriate since there is no neglect of duty on their part as they were precisely performing their duty to protect the environment when the closure was ordered.

Suffice it to state, however, that the use of prohibition and *mandamus* is not merely confined to Rule 65. These extraordinary remedies may be invoked when constitutional violations or issues are raised. As the Court stated in *Spouses Imbong v. Hon. Ochoa, Jr.*:²⁴

As far back as *Tañada v. Angara*, the Court has unequivocally declared that *certiorari*, **prohibition and *mandamus* are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials, as there is no other plain, speedy or adequate remedy in the ordinary course of law.** This ruling was later on applied in *Macalintal v. COMELEC*, *Aldaba v. COMELEC*, *Magallona v. Ermita*, and countless others. In *Tañada*, the Court wrote:

In seeking to nullify an act of the Philippine Senate on the ground that it contravenes the Constitution, the petition no doubt raises a justiciable controversy. Where an action of the legislative branch is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute. ‘The question thus posed is judicial rather than political. The duty (to adjudicate) remains to assure that the supremacy of the Constitution is upheld.’ Once a ‘controversy as to the application or interpretation of constitutional provision is raised before this Court, as in the instant case, it becomes a legal issue which the Court is bound by constitutional mandate to decide. x x x²⁵ (Citations omitted; emphasis supplied)



²³ *Uy Kiao Eng v. Lee*, 624 Phil. 200, 206-207 (2010).

²⁴ 732 Phil. 1 (2014).

²⁵ *Id.* at 121-122.

It must be stressed, though, that resort to prohibition and *mandamus* on the basis of alleged constitutional violations is not without limitations. After all, this Court does not have unrestrained authority to rule on just about any and every claim of constitutional violation.²⁶ The petition must be subjected to the four exacting requisites for the exercise of the power of judicial review, *viz.*: (a) there must be an actual case or controversy; (b) the petitioners must possess *locus standi*; (c) the question of constitutionality must be raised at the earliest opportunity; and (d) the issue of constitutionality must be the *lis mota* of the case.²⁷ Hence, it is not enough that this petition mounts a constitutional challenge against Proclamation No. 475. It is likewise necessary that it meets the aforementioned requisites before the Court sustains the propriety of the recourse.

Existence of Requisites for Judicial Review

In *La Bugal-B'laan Tribal Association, Inc. v. Sec. Ramos*,²⁸ an actual case or controversy was characterized as a “case or controversy that is appropriate or ripe for determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion. The power does not extend to hypothetical questions since any attempt at abstraction could only lead to dialectics and barren legal question and to sterile conclusions unrelated to actualities.”²⁹

The existence of an actual controversy in this case is evident. President Duterte issued Proclamation No. 475 on April 26, 2018 and, pursuant thereto, Boracay was temporarily closed the same day. Entry of non-residents and tourists to the island was not allowed until October 25, 2018. Certainly, the implementation of the proclamation has rendered legitimate the concern of petitioners that constitutional rights may have possibly been breached by this governmental measure. It bears to state that when coupled with sufficient facts, “reasonable certainty of the occurrence of a perceived threat to any constitutional interest suffices to provide a basis for mounting a constitutional challenge”.³⁰ And while it may be argued that the reopening of Boracay has seemingly rendered moot and academic questions relating to the ban of tourists and non-residents into the island, abstention from judicial review is precluded by such possibility of constitutional violation and also by the exceptional character of the situation, the paramount public interest involved, and the fact that the case is capable of repetition.³¹

²⁶ Id. at 122.

²⁷ Id.

²⁸ 465 Phil 860 (2004).

²⁹ Id. at 889-890.

³⁰ *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*, 646 Phil. 452, 481 (2010).

³¹ *Funa v. Acting Secretary Agra*, 704 Phil. 205, 219-220 (2013).

As to legal standing, petitioners assert that they were directly injured since their right to travel and, their right to work and earn a living which thrives solely on tourist arrivals, were affected by the closure. They likewise want to convince the Court that the issues here are of transcendental importance since according to them, the resolution of the same will have far-reaching consequences upon all persons living and working in Boracay; upon the Province of Aklan which is heavily reliant on the island's tourism industry; and upon the whole country considering that fundamental constitutional rights were allegedly breached.

“Legal standing or *locus standi* is a party's personal and substantial interest in a case such that he has sustained or will sustain direct injury as a result of the governmental act being challenged. It calls for more than just a generalized grievance. The term ‘interest’ means a material interest, an interest in issue affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest.”³² There must be a present substantial interest and not a mere expectancy or a future, contingent, subordinate, or consequential interest.³³

In *Galicto v. Aquino III*,³⁴ the therein petitioner, Jelbert B. Galicto (Galicto) questioned the constitutionality of Executive Order No. 7 (EO7) issued by President Benigno Simeon C. Aquino III, which ordered, among others, a moratorium on the increases in the salaries and other forms of compensation of all government-owned-and-controlled corporations (GOCCs) and government financial institutions. The Court held that Galicto, an employee of the GOCC Philhealth, has no legal standing to assail EO7 for his failure to demonstrate that he has a personal stake or material interest in the outcome of the case. His interest, if any, was speculative and based on a mere expectancy. Future increases in his salaries and other benefits were contingent events or expectancies to which he has no vested rights. Hence, he possessed no *locus standi* to question the curtailment thereof.

Here, as mentioned, Zabal is a sandcastle maker and Jacosalem, a driver. The nature of their livelihood is one wherein earnings are not guaranteed. As correctly pointed out by respondents, their earnings are not fixed and may vary depending on the business climate in that while they can earn much on peak seasons, it is also possible for them not to earn anything on lean seasons, especially when the rainy days set in. Zabal and Jacosalem could not have been oblivious to this kind of situation, they having been in the practice of their trade for a considerable length of time. Clearly, therefore, what Zabal and Jacosalem could lose in this case are mere projected earnings which are in no way guaranteed, and are sheer

³² *Jumamil v. Café*, 507 Phil. 455, 465 (2005).

³³ *Galicto v. H.E. President Aquino III*, 683 Phil 141, 171 (2012).

³⁴ *Id.*

expectancies characterized as contingent, subordinate, or consequential interest, just like in *Galicto*. Concomitantly, an assertion of direct injury on the basis of loss of income does not clothe Zabal and Jacosalem with legal standing.

As to Bandiola, the petition is bereft of any allegation as to his substantial interest in the case and as to how he sustained direct injury as a result of the issuance of Proclamation No. 475. While the allegation that he is a non-resident who occasionally goes to Boracay for business and pleasure may suggest that he is claiming direct injury on the premise that his right to travel was affected by the proclamation, the petition fails to expressly provide specifics as to how. "It has been held that a party who assails the constitutionality of a statute must have a direct and personal interest. [He] must show not only that the law or any governmental act is invalid, but also that [he] sustained or is in immediate danger of sustaining some direct injury as a result of its enforcement, and not merely that [he] suffers thereby in some indefinite way. [He] must show that [he] has been or is about to be denied some right or privilege to which [he] is lawfully entitled or that [he] is about to be subjected to some burdens or penalties by reason of the statute or act complained of."³⁵ Indeed, the petition utterly fails to demonstrate that Bandiola possesses the requisite legal standing to sue.

Notwithstanding petitioners' lack of *locus standi*, this Court will allow this petition to proceed to its ultimate conclusion due to its transcendental importance. After all, the rule on *locus standi* is a mere procedural technicality, which the Court, in a long line of cases involving subjects of transcendental importance, has waived or relaxed, thus allowing non-traditional plaintiffs such as concerned citizens, taxpayers, voters and legislators to sue in cases of public interest, albeit they may not have been personally injured by a government act.³⁶ More importantly, the matters raised in this case, involved on one hand, possible violations of the Constitution and, on the other, the need to rehabilitate the country's prime tourist destination. Undeniably, these matters affect public interests and therefore are of transcendental importance to the people. In addition, the situation calls for review because as stated, it is capable of repetition, the Court taking judicial notice of the many other places in our country that are suffering from similar environmental degradation.

As to the two other requirements, their existence is indubitable. It will be recalled that even before a formal issuance on the closure of Boracay was made by the government, petitioners already brought the question of the constitutionality of the then intended closure to this Court. And, a day after Proclamation No. 475 was issued, they filed a supplemental petition

³⁵ *Anak Mindanao Party-List Group v. Executive Secretary Ermita*, 558 Phil. 338,351 (2007).

³⁶ *Funa v. Chairman Villar*, 686 Phil. 571, 585 (2012).

impugning its constitutionality. Clearly, the filing of the petition and the supplemental petition signals the earliest opportunity that the constitutionality of the subject government measure could be raised. There can also be no denying that the very *lis mota* of this case is the constitutionality of Proclamation No. 475.

Defense of SLAPP

Suffice it to state that while this case touches on the environmental issues in Boracay, the ultimate issue for resolution is the constitutionality of Proclamation No. 475. The procedure in the treatment of a defense of SLAPP provided for under Rule 6 of the Rules of Procedure for Environmental Cases should not, therefore, be made to apply.

Now as to the substantive issues.

We first quote in full Proclamation No. 475.

PROCLAMATION No. 475

DECLARING A STATE OF CALAMITY IN THE BARANGAYS OF BALABAG, MANOC-MANOC AND YAPAK (ISLAND OF BORACAY) IN THE MUNICIPALITY OF MALAY, AKLAN, AND TEMPORARY CLOSURE OF THE ISLAND AS A TOURIST DESTINATION

WHEREAS, Section 15, Article II of the 1987 Constitution states that the State shall protect and promote the right to health of the people and instill health consciousness among them;

WHEREAS, Section 16, Article II of the 1987 Constitution provides that it is the policy of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature;

WHEREAS, Section 2, Article XII of the 1987 Constitution provides that the State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone;

WHEREAS, an Inter-Agency Task Force, composed of the Department of Environment and Natural Resources (DENR), the [DILG] and the Department of Tourism (DOT), was established to evaluate the environmental state of the Island of Boracay, and investigate possible violations of existing environmental and health laws, rules and regulations;



WHEREAS, the investigations and validation undertaken revealed that:

- a. There is a high concentration of fecal coliform in the Bolabog beaches located in the eastern side of Boracay Island due to insufficient sewer lines and illegal discharge of untreated waste water into the beach, with daily tests conducted from 6 to 10 March 2018 revealing consistent failure in compliance with acceptable water standards, with an average result of 18,000 most probable number (MPN)/100ml, exceeding the standard level of 400 MPN/100ml;
- b. Most commercial establishments and residences are not connected to the sewerage infrastructure of Boracay Island, and waste products are not being disposed through the proper sewerage infrastructures in violation of environmental law, rules, and regulations;
- c. Only 14 out of 51 establishments near the shores of Boracay Island are compliant with the provision of Republic Act (RA) No. 9275 or the Philippine Clean Water Act of 2004;
- d. Dirty water results in the degradation of the coral reefs and coral cover of Boracay Island, which declined by approximately 70.5% from 1988 to 2011, with the highest decrease taking place between 2008 and 2011 during a period of increased tourist arrivals (approximately 38.4%);
- e. Solid waste within Boracay Island is at a generation rate of 90 to 115 tons per day, while the hauling capacity of the local government is only 30 tons per day, hence, leaving approximately 85 tons of waste in the Island daily;
- f. The natural habitats of Puka shells, nesting grounds of marine turtles, and roosting grounds of flying foxes or fruit bats have been damaged and/or destroyed; and
- g. Only four (4) out of nine (9) wetlands in Boracay Island remain due to illegal encroachment of structures, including 937 identified illegal structures constructed on forestlands and wetlands, as well as 102 illegal structures constructed on areas already classified as easements, and the disappearance of the wetlands, which acts as natural catchments, enhances flooding in the area;

WHEREAS, the findings of the Department of Science and Technology (DOST) reveal that beach erosion is prevalent in Boracay Island, particularly along the West Beach, where as much as 40 meters of erosion has taken place in the past 20 years from 1993 to 2003, due to storms, extraction of sand along the beach to construct properties and structures along the foreshore, and discharge of waste water near the shore causing degradation of coral reefs and seagrass meadows that supply the beach with sediments and serve as buffer to wave action;



WHEREAS, the DOST also reports that based on the 2010-2015 Coastal Ecosystem Conservation and Adaptive Management Study of the Japan International Cooperation Agency, direct discharge of waste water near the shore has resulted in the frequent algal bloom and coral deterioration, which may reduce the source of sand and cause erosion;

WHEREAS, the data from the Region VI – Western Visayas Regional Disaster Risk Reduction and Management Council shows that the number of tourists in the island in a day amounts to 18,082, and the tourist arrival increased by more than 160% from 2012 to 2017;

WHEREAS, the continuous rise of tourist arrivals, the insufficient sewer and waste management system, and environmental violations of establishments aggravate the environmental degradation and destroy the ecological balance of the Island of Boracay, resulting in major damage to property and natural resources, as well as the disruption of the normal way of life of the people therein;

WHEREAS, it is necessary to implement urgent measures to address the abovementioned human-induced hazards, to protect and promote the health and well-being of its residents, workers and tourists, and to rehabilitate the Island in order to ensure the sustainability of the area and prevent further degradation of its rich ecosystem;

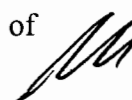
WHEREAS, RA No. 9275 provides that the DENR shall designate water bodies, or portions thereof, where specific pollutants from either natural or man-made source have already exceeded water quality guidelines as non-attainment areas for the exceeded pollutants and shall prepare and implement a program that will not allow new sources of exceeded water pollutant in non-attainment areas without a corresponding reduction in discharges from existing sources;

WHEREAS, RA No. 9275 also mandates the DENR, in coordination with other concerned agencies and the private sectors, to take such measures as may be necessary to upgrade the quality of such water in non-attainment areas to meet the standards under which it has been classified, and the local government units to prepare and implement contingency plans and other measures including relocation, whenever necessary, for the protection of health and welfare of the residents within potentially affected areas;

WHEREAS, Proclamation No. 1064 (s. 2006) classified the Island of Boracay into 377.68 hectares of reserved forest land for protection purposes and 628.96 hectares of agricultural land as alienable and disposable land;

WHEREAS, pursuant to the Regalian Doctrine, and as emphasized in recent jurisprudence, whereby all lands not privately owned belong to the State, the entire island of Boracay is state-owned, except for lands already covered by existing valid titles;

WHEREAS, pursuant to RA No. 10121, or the Philippine Disaster Risk Reduction and Management Act of 2010, the National Disaster Risk Reduction and Management Council has recommended the declaration of a State of Calamity in the Island of Boracay and the temporary closure of



the Island as a tourist destination to ensure public safety and public health, and to assist the government in its expeditious rehabilitation, as well as in addressing the evolving socio-economic needs of affected communities;

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby declare a State of Calamity in the barangays of Balabag, Manoc-Manoc and Yapak (Island of Boracay) in the Municipality of Malay, Aklan. In this regard, the temporary closure of the Island as a tourist destination for six (6) months starting 26 April 2018, or until 25 October 2018, is hereby ordered subject to applicable laws, rules, regulations and jurisprudence.

Concerned government agencies shall, as may be necessary or appropriate, undertake the remedial measures during a State of Calamity as provided in RA No. 10121 and other applicable laws, rules and regulations, such as control of the prices of basic goods and commodities for the affected areas, employment of negotiated procurement and utilization of appropriate funds, including the National Disaster Risk Reduction and Management Fund, for relief and rehabilitation efforts in the area. All departments and other concerned government agencies are also hereby directed to coordinate with, and provide or augment the basic services and facilities of affected local government units, if necessary.

The State of Calamity in the Island of Boracay shall remain in force and effect until lifted by the President, notwithstanding the lapse of the six-month closure period.

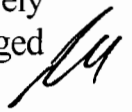
All departments, agencies and offices, including government-owned or controlled corporations and affected local government units are hereby directed to implement and execute the abovementioned closure and the appropriate rehabilitation works, in accordance with pertinent operational plans and directives, including the Boracay Action Plan.

The Philippine National Police, Philippine Coast Guard and other law enforcement agencies, with the support of the Armed Forces of the Philippines, are hereby directed to act with restraint and within the bounds of the law in the strict implementation of the closure of the Island and ensuring peace and order in the area.

The Municipality of Malay, Aklan is also hereby directed to ensure that no tourist will be allowed entry to the island of Boracay until such time that the closure has been lifted by the President.

All tourists, residents and establishment owners in the area are also urged to act within the bounds of the law and to comply with the directives herein provided for the rehabilitation and restoration of the ecological balance of the Island which will be for the benefit of all concerned.

It must be noted at the outset that petitioners failed to present and establish the factual bases of their arguments because they went directly to this Court. In ruling on the substantive issues in this case, the Court is, thus, constrained to rely on, and uphold the factual bases, which prompted the issuance of the challenged



proclamation, as asserted by respondents. Besides, executive determinations, such as said factual bases, are generally final on this Court.³⁷

The Court observes that the meat of petitioners' constitutional challenge on Proclamation No. 475 is the right to travel.

Clearly then, the one crucial question that needs to be preliminarily answered is - *does Proclamation No. 475 constitute an impairment on the right to travel?*

The Court answers in the negative.

Proclamation No. 475 does not pose an actual impairment on the right to travel

Petitioners claim that Proclamation No. 475 impairs the right to travel based on the following provisions:

NOW, THEREFORE, I, RODRIGO ROA DUTERTE, President of the Philippines, by virtue of the powers vested in me by the Constitution and existing laws, do hereby declare a State of Calamity in the barangays of Balabag, Manoc-Manoc and Yapak (Island of Boracay) in the Municipality of Malay, Aklan. In this regard, **the temporary closure of the Island as a tourist destination for six (6) months starting 26 April 2018, or until 25 October 2018, is hereby ordered** subject to applicable laws, rules, regulations and jurisprudence.

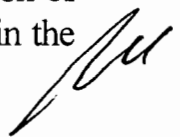
x x x x

The Municipality of Malay, Aklan is also hereby directed to ensure that **no tourist will be allowed entry to the island of Boracay** until such time that the closure has been lifted by the President.

x x x x

The activities proposed to be undertaken to rehabilitate Boracay involved inspection, testing, demolition, relocation, and construction. These could not have been implemented freely and smoothly with tourists coming in and out of the island not only because of the possible disruption that they may cause to the works being undertaken, but primarily because their safety and convenience might be compromised. Also, the contaminated waters in the island were not just confined to a small manageable area. The excessive water pollutants were all over Bolabog beach and the numerous illegal drainpipes connected to and discharging wastewater over it originate from different parts of the island. Indeed, the activities occasioned by the necessary digging of these pipes and the isolation of the contaminated beach waters to give way to treatment could not be done in the

³⁷ *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*, 246 Phil. 393, 401 (1988).



presence of tourists. Aside from the dangers that these contaminated waters pose, hotels, inns, and other accommodations may not be available as they would all be inspected and checked to determine their compliance with environmental laws. Moreover, it bears to state that a piece-meal closure of portions of the island would not suffice since as mentioned, illegal drainpipes extend to the beach from various parts of Boracay. Also, most areas in the island needed major structural rectifications because of numerous resorts and tourism facilities which lie along easement areas, illegally reclaimed wetlands, and of forested areas that were illegally cleared for construction purposes. Hence, the need to close the island in its entirety and ban tourists therefrom.

In fine, this case does not actually involve the right to travel in its essential sense contrary to what petitioners want to portray. Any bearing that Proclamation No. 475 may have on the right to travel is merely corollary to the closure of Boracay and the ban of tourists and non-residents therefrom which were necessary incidents of the island's rehabilitation. There is certainly no showing that Proclamation No. 475 deliberately meant to impair the right to travel. The questioned proclamation is clearly focused on its purpose of rehabilitating Boracay and any intention to directly restrict the right cannot, in any manner, be deduced from its import. This is contrary to the import of several laws recognized as constituting an impairment on the right to travel which **directly** impose restriction on the right, *viz.*:

[1] *The Human Security Act of 2010 or Republic Act (R.A.) No. 9372.* The law restricts the right travel of an individual charged with the crime of terrorism even though such person is out on bail.

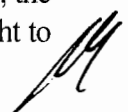
[2] *The Philippine Passport Act of 1996 or R.A. No. 8239.* Pursuant to said law, the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen.

[3] *The 'Anti-Trafficking in Persons Act of 2003' or RA 9208.* Pursuant to the provisions thereof, the Bureau of Immigration, in order to manage migration and curb trafficking in persons, issued Memorandum Order Radjr No. 2011-011, allowing its Travel Control and Enforcement Unit to 'offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking' from our ports.

[4] *The Migrant Workers and Overseas Filipinos Act of 1995 or R.A. No. 8042, as amended by R.A. No. 10022.* In enforcement of said law, the Philippine Overseas Employment Administration (POEA) may refuse to issue deployment permit[s] to a specific country that effectively prevents our migrant workers to enter such country.

[5] *The Act on Violence Against Women and Children or R.A. No. 9262.* The law restricts movement of an individual against whom the protection order is intended.

[6] *Inter-Country Adoption Act of 1995 or R.A. No. 8043.* Pursuant thereto, the Inter-Country Adoption Board may issue rules restrictive of an adoptee's right to



travel ‘to protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child.’³⁸

In *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*,³⁹ the Court held that the consequence on the right to travel of the deployment ban implemented by virtue of Department Order No. 1, Series of 1998 of the Department of Labor and Employment does not impair the right.

Also significant to note is that the closure of Boracay was only temporary considering the categorical pronouncement that it was only for a definite period of six months.

Hence, if at all, the impact of Proclamation No. 475 on the right to travel is not direct but merely consequential; and, the same is only for a reasonably short period of time or merely temporary.

In this light, a discussion on whether President Duterte exercised a power legislative in nature loses its significance. Since Proclamation No. 475 does not actually impose a restriction on the right to travel, its issuance did not result to any substantial alteration of the relationship between the State and the people. The proclamation is therefore not a law and conversely, the President did not usurp the law-making power of the legislature.

For obvious reason, there is likewise no more need to determine the existence in this case of the requirements for a valid impairment of the right to travel.

Even if it is otherwise, Proclamation No. 475 must be upheld for being in the nature of a valid police power measure

Police power, amongst the three fundamental and inherent powers of the state, is the most pervasive and comprehensive.⁴⁰ “It has been defined as the ‘state authority to enact legislation that may interfere with personal liberty or property in order to promote general welfare.’”⁴¹ “As defined, it consists of (1) imposition or restraint upon liberty or property, (2) in order to foster the common good. It is not capable of exact definition but has been,

³⁸ *Leave Division, Office of the Administrative Services (OAS)-Office of the Court Administrator (OCA) v. Heusdens*, 678 Phil. 328, 339-340 (2011).

³⁹ *Supra* note 37.


⁴⁰ Gorospe, Rene, B., *Constitutional Law, Notes and Readings on the Bill of Rights, Citizenship and Suffrage*, Volume I (2006), p. 9.

⁴¹ *Id.*, citing *Edu v. Ericta*, 146 Phil. 469 (1970).

purposely, veiled in general terms to underscore its all-comprehensive embrace.”⁴² The police power “finds no specific Constitutional grant for the plain reason that it does not owe its origin to the Charter”⁴³ since “it is inborn in the very fact of statehood and sovereignty.”⁴⁴ It is said to be the “inherent and plenary power of the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of the society.”⁴⁵ Thus, police power constitutes an implied limitation on the Bill of Rights.⁴⁶ After all, “the Bill of Rights itself does not purport to be an absolute guaranty of individual rights and liberties. ‘Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one’s will.’ It is subject to the far more overriding demands and requirements of the greater number.”⁴⁷

“Expansive and extensive as its reach may be, police power is not a force without limits.”⁴⁸ “It has to be exercised within bounds – lawful ends through lawful means, *i.e.*, that the interests of the public generally, as distinguished from that of a particular class, require its exercise, and that the means employed are reasonably necessary for the accomplishment of the purpose while not being unduly oppressive upon individuals.”⁴⁹

That the assailed governmental measure in this case is within the scope of police power cannot be disputed. Verily, the statutes⁵⁰ from which the said measure draws authority and the constitutional provisions⁵¹ which serve as its framework are primarily concerned with the environment and health, safety, and well-being of the people, the promotion and securing of which are clearly legitimate objectives of governmental efforts and regulations. The motivating factor in the issuance of Proclamation No. 475 is without a doubt the interest of the public in general. The only question now is whether the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

The pressing need to implement urgent measures to rehabilitate Boracay is beyond cavil from the factual milieu that precipitated the President’s issuance of Proclamation No. 475. This necessity is even made more critical and insistent by what the Court said in *Oposa v. Hon. Factoran, Jr.*⁵² in regard the rights to a balanced and healthful ecology and to health, which rights are likewise integral concerns in this case. *Oposa* 

⁴² Id.

⁴³ *Philippine Association of Service Exporters, Inc. v. Hon. Drilon*, supra note 37 at 398.

⁴⁴ Id.

⁴⁵ Id. at 399.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ Gorospe, Rene, B., *Constitutional Law, Notes and Readings on the Bill of Rights, Citizenship and Suffrage*, Volume 1 (2006), p. 12.

⁴⁹ Id.

⁵⁰ RA 10121 and RA 9275 or The Philippine Clean Water Act

⁵¹ CONSTITUTION, Article II, Sections 15 and 16 and Article XII, Section 2.

⁵² 296 Phil. 694 (1993).

warned that unless the rights to a balanced and healthful ecology and to health are given continuing importance and the State assumes its solemn obligation to preserve and protect them, the time will come that nothing will be left not only for this generation but for the generations to come as well.⁵³ It further taught that the right to a balanced and healthful ecology carries with it the correlative duty to refrain from impairing the environment.⁵⁴

Against the foregoing backdrop, we now pose this question: *Was the temporary closure of Boracay as a tourist destination for six months reasonably necessary under the circumstances?* The answer is in the affirmative.

As earlier noted, one of the root causes of the problems that beset Boracay was tourist influx. Tourist arrivals in the island were clearly far more than Boracay could handle. As early as 2007, the DENR had already determined this as the major cause of the catastrophic depletion of the island's biodiversity.⁵⁵ Also part of the equation is the lack of commitment to effectively enforce pertinent environmental laws. Unfortunately, direct action on these matters has been so elusive that the situation reached a critical level. Hence, by then, only bold and sweeping steps were required by the situation.

Certainly, the closure of Boracay, albeit temporarily, gave the island its much needed breather, and likewise afforded the government the necessary leeway in its rehabilitation program. Note that apart from review, evaluation and amendment of relevant policies, the bulk of the rehabilitation activities involved inspection, testing, demolition, relocation, and construction. These works could not have easily been done with tourists present. The rehabilitation works in the first place were not simple, superficial or mere cosmetic but rather quite complicated, major, and permanent in character as they were intended to serve as long-term solutions to the problem.⁵⁶ Also, time is of the essence. Every precious moment lost is to the detriment of Boracay's environment and of the health and well-being of the people thereat. Hence, any unnecessary distraction or disruption is most unwelcome. Moreover, as part of the rehabilitation efforts, operations of establishments in Boracay had to be halted in the course thereof since majority, if not all of them, need to comply with environmental and regulatory requirements in order to align themselves with the government's goal to restore Boracay into normalcy and develop its sustainability. Allowing tourists into the island while it was undergoing necessary rehabilitation would therefore be pointless as no establishment would cater

⁵³ Id. at 713.

⁵⁴ Id.

⁵⁵ *Rollo*, p. 145.

⁵⁶ See Executive Order No. 53, *CREATING A BORACAY INTER-AGENCY TASK FORCE, PROVIDING FOR ITS POWERS AND FUNCTIONS AND THOSE OF THE MEMBER-AGENCIES THEREOF, AND OTHER MEASURES TO REVERSE THE DEGRADATION OF BORACAY ISLAND*, id. at 202-207.

to their accommodation and other needs. Besides, it could not be said that Boracay, at the time of the issuance of the questioned proclamation, was in such a physical state that would meet its purpose of being a tourist destination. For one, its beach waters could not be said to be totally safe for swimming. In any case, the closure, to emphasize, was only for a definite period of six months, *i.e.*, from April 26, 2018 to October 25, 2018. To the mind of the Court, this period constitutes a reasonable time frame, if not to complete, but to at least put in place the necessary rehabilitation works to be done in the island. Indeed, the temporary closure of Boracay, although unprecedented and radical as it may seem, was reasonably necessary and not unduly oppressive under the circumstances. It was the most practical and realistic means of ensuring that rehabilitation works in the island are started and carried out in the most efficacious and expeditious way. Absent a clear showing of grave abuse of discretion, unreasonableness, arbitrariness or oppressiveness, the Court will not disturb the executive determination that the closure of Boracay was necessitated by the foregoing circumstances. As earlier noted, petitioners totally failed to counter the factual bases of, and justification for the challenged executive action.

Undoubtedly, Proclamation No. 475 is a valid police power measure. To repeat, police power constitutes an implied limitation to the Bill of Rights, and that even liberty itself, the greatest of all rights, is subject to the far more overriding demands and requirements of the greater number.

For the above reasons, petitioners' constitutional challenge on Proclamation No. 475 anchored on their perceived impairment of the right to travel must fail.

Petitioners have no vested rights on their sources of income as to be entitled to due process

Petitioners argue that Proclamation No. 475 impinges on their constitutional right to due process since they were deprived of the corollary right to work and earn a living by reason of the issuance thereof.

Concededly, “[a] profession, trade or calling is a property right within the meaning of our constitutional guarantees. One cannot be deprived of the right to work and the right to make a living because these rights are property rights, the arbitrary and unwarranted deprivation of which normally constitutes an actionable wrong.”⁵⁷ Under this premise, petitioners claim that they were deprived of due process when their right to work and earn a living was taken away from them when Boracay was ordered closed as a tourist destination. It must be stressed, though, that “when the conditions so

⁵⁷ *JMM Promotion and Management, Inc. v. Court of Appeals*, 329 Phil. 87, 99-100 (1996).

demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.”⁵⁸ Otherwise, police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, government measures implemented pursuant to the said state power would be stymied or invalidated.⁵⁹

In any case, petitioners, particularly Zabal and Jacosalem, cannot be said to have already acquired vested rights to their sources of income in Boracay. As heretofore mentioned, they are part of the informal sector of the economy where earnings are not guaranteed. In *Southern Luzon Drug Corporation v. Department of Social Welfare and Development*,⁶⁰ the Court elucidated on vested rights, as follows:

x x x Vested rights are ‘fixed, unalterable, or irrevocable.’ More extensively, they are depicted as follows:

Rights which have so completely and definitely accrued to or settled in a person that they are not subject to be defeated or cancelled by the act of any other private person, and which it is right and equitable that the government should recognize and protect, as being lawful in themselves, and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwise than by the established methods of procedure and for the public welfare. x x x A right is not ‘vested’ unless it is more than a mere expectancy based on the anticipated continuance of present laws; it must be an established interest in property, not open to doubt. x x x To be vested in its accurate legal sense, a right must be complete and consummated, and one of which the person to whom it belongs cannot be divested without his consent. x x x⁶¹

Here, Zabal and Jacosalem’s asserted right to whatever they may earn from tourist arrivals in Boracay is merely an inchoate right or one that has not fully developed and therefore cannot be claimed as one’s own. An inchoate right is a mere expectation, which may or may not come into fruition. “It is contingent as it only comes ‘into existence on an event or condition which may not happen or be performed until some other event may prevent their vesting.’”⁶² Clearly, said petitioners’ earnings are contingent in that, even assuming tourists are still allowed in the island, they

⁵⁸ *Carlos Superdrug Corporation v. Department of Social Welfare and Development*, 553 Phil. 120, 132 (2007).

⁵⁹ *Id.*

⁶⁰ G.R. No. 199669, April 25, 2017, 824 SCRA 164.

⁶¹ *Id.* at 211.


⁶² *Id.* at 212.

will still earn nothing if no one avails of their services. Certainly, they do not possess any vested right on their sources of income, and under this context, their claim of lack of due process collapses. To stress, only rights which have completely and definitely accrued and settled are entitled protection under the due process clause.

Besides, Proclamation No. 475 does not strip Zabal and Jacosalem of their right to work and earn a living. They are free to work and practice their trade elsewhere. That they were not able to do so in Boracay, at least for the duration of its closure, is a necessary consequence of the police power measure to close and rehabilitate the island.

Also clearly untenable is petitioners' claim that they were being made to suffer the consequences of the environmental transgressions of others. It must be stressed that the temporary closure of Boracay as a tourist destination and the consequent ban of tourists into the island were not meant to serve as penalty to violators of environmental laws. The temporary closure does not erase the environmental violations committed; hence, the liabilities of the violators remain and only they alone shall suffer the same. The temporary inconvenience that petitioners or other persons may have experienced or are experiencing is but the consequence of the police measure intended to attain a much higher purpose, that is, to protect the environment, the health of the people, and the general welfare. Indeed, any and all persons may be burdened by measures intended for the common good or to serve some important governmental interest.⁶³

No intrusion into the autonomy of the concerned LGUs

The alleged intrusion of the President into the autonomy of the LGUs concerned is likewise too trivial to merit this Court's consideration. Contrary to petitioners' argument, RA 10121 recognizes and even puts a premium on the role of the LGUs in disaster risk reduction and management as shown by the fact that a number of the legislative policies set out in the subject statute recognize and aim to strengthen the powers decentralized to LGUs.⁶⁴ This role is echoed in the questioned proclamation. 

⁶³ *Manila Memorial Park, Inc. v. Secretary of the Department of Social Welfare and Development*, 722 Phil. 538, 590 (2013).

⁶⁴ Relevant legislative policies of RA 10121 state, *viz.*:

SECTION 2. *Declaration of Policy.* - It shall be the policy of the State to:

x x x x

(e) Develop, promote, and implement a comprehensive National Disaster Risk Reduction and Management Plan (NDRRMP) **that aims to strengthen the capacity** of the national government and **the local government units (LGUs)**, together with partner stakeholders, to build the disaster resilience of communities, and to institutionalize arrangements and measures for reducing disaster risks, including projected climate risks, and enhancing disaster preparedness and response capabilities at all levels;

x x x x

The fact that other government agencies are involved in the rehabilitation works does not create the inference that the powers and functions of the LGUs are being encroached upon. The respective roles of each government agency are particularly defined and enumerated in Executive Order No. 53⁶⁵ and all are in accordance with their respective mandates. Also, the situation in Boracay can in no wise be characterized or labelled as a mere local issue as to leave its rehabilitation to local actors. Boracay is a prime tourist destination which caters to both local and foreign tourists. Any issue thereat has corresponding effects, direct or otherwise, at a national level. This, for one, reasonably takes the issues therein from a level that concerns only the local officials. At any rate, notice must be taken of the fact that even if the concerned LGUs have long been fully aware of the problems afflicting Boracay, they failed to effectively remedy it. Yet still, in recognition of their mandated roles and involvement in the rehabilitation of Boracay, Proclamation No. 475 directed “[a]ll departments, agencies and offices, including government-owned or controlled corporations and **affected local government units** x x x to implement and execute x x x the closure [of Boracay] and the appropriate rehabilitation works; in accordance with pertinent operational plans and directives, including the Boracay Action Plan.”

As a final note, the Court in *Metropolitan Manila Development Authority v. Concerned Residents of Manila Bay*,⁶⁶ called out the concerned government agencies for their cavalier attitude towards solving environmental destruction despite hard evidence and clear signs of climate crisis. It equated the failure to put environmental protection on a plane of high national priority to the then lacking level of bureaucratic efficiency and commitment. Hence, the Court therein took it upon itself to put the heads of concerned department-agencies and the bureaus and offices under them on continuing notice and to enjoin them to perform their mandates and duties towards the clean-up and/or restoration of Manila Bay, through a “continuing *mandamus*.” It likewise took the occasion to state, *viz.*:

In the light of the ongoing environmental degradation, the Court wishes to emphasize the extreme necessity for all concerned executive departments and agencies to immediately act and discharge their respective official duties and obligations. Indeed, time is of the essence; hence, there is a need to set timetables for the performance and completion of the tasks, some of them as defined for them by law and the nature of their respective offices and mandates.

(k) Recognize the local risk patterns across the country and **strengthen the capacity of LGUs** for disaster risk reduction and management through decentralized powers, responsibilities, and resources at the regional and local levels; [and]

(l) **Recognize and strengthen the capacities of LGUs** and communities in mitigating and preparing for, responding to, and recovering from the impact of disasters;

x x x x

⁶⁵ Supra note 56.

⁶⁶ 595 Phil. 305 (2008).

The importance of the Manila Bay as a sea resource, playground and as a historical landmark cannot be over-emphasized. It is not yet too late in the day to restore the Manila Bay to its former splendor and bring back the plants and sea life that once thrived in its blue waters. But the tasks ahead, daunting as they may be, could only be accomplished if those mandated, with the help and cooperation of all civic-minded individuals, would put their minds to these tasks and take responsibility. This means that the State, through [the concerned department-agencies], has to take the lead in the preservation and protection of the Manila Bay.

The era of delays, procrastination, and *ad hoc* measures is over. [The concerned department-agencies] must transcend their limitations, real or imaginary, and buckle down to work before the problem at hand becomes unmanageable. Thus, we must reiterate that different government agencies and instrumentalities cannot shirk from their mandates; they must perform their basic functions in cleaning up and rehabilitating the Manila Bay. x x x⁶⁷

There is an obvious similarity in *Metropolitan Manila Development Authority* and in the present case in that both involve the restoration of key areas in the country which were once glowing with radiance and vitality but are now in shambles due to abuses and exploitation. What sets these two cases apart is that in the former, those mandated to act still needed to be enjoined in order to act. In this case, the bold and urgent action demanded by the Court in *Metropolitan Manila Development Authority* is now in the roll out. Still, the voice of cynicism, naysayers, and procrastinators heard during times of inaction can still be heard during this time of full action – demonstrating a classic case of “damn if you do, damn if you don’t”. Thus, in order for the now staunch commitment to save the environment not to fade, it behooves upon the courts to be extra cautious in invalidating government measures meant towards addressing environmental degradation. Absent any clear showing of constitutional infirmity, arbitrariness or grave abuse of discretion, these measures must be upheld and even lauded and promoted. After all, not much time is left for us to remedy the present environmental situation. To borrow from *Oposa*, unless the State undertakes its solemn obligation to preserve the rights to a balanced and healthful ecology and advance the health of the people, “the day would not be too far when all else would be lost not only for the present generation, but also for those to come – generations which stand to inherit nothing but parched earth incapable of sustaining life.”⁶⁸

All told, the Court sustains the constitutionality and validity of Proclamation No. 475.

WHEREFORE, the Petition for Prohibition and *Mandamus* is **DISMISSED.**

⁶⁷ Id. at 346-347.

⁶⁸ *Oposa v. Hon. Factoran, Jr.*, supra note 52 at 713.

SO ORDERED.

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

Lucas P. Bersamin
LUCAS P. BERSAMIN
Chief Justice

Se Separate Concurring Opinion
Antonio T. Carpio
ANTONIO T. CARPIO
Associate Justice

Diosdado M. Peralta
DIOSDADO M. PERALTA
Associate Justice

See Separate Concurring Opinion
Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

I dissent. See separate opinion

Marvic M.V. F. Leonen
MARVIC M.V. F. LEONEN
Associate Justice

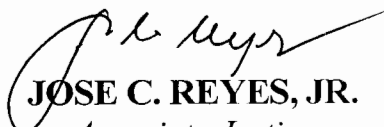
See concurring and dissenting opinion
Francis H. Jardeleza
FRANCIS H. JARDELEZA
Associate Justice

I dissent. See dissenting opinion.

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

Andres B. Reyes, Jr.
ANDRES B. REYES, JR.
Associate Justice

Alexander G. Gesmundo
ALEXANDER G. GESMUNDO
Associate Justice



JOSE C. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


ROSMARI D. CARANDANG
Associate Justice

CERTIFICATION

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.


LUCAS P. BERSAMIN
Chief Justice

