



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

RUSSELL Q. BERNAL, in his capacity as the Authorized Managing Officer of Ciara Construction/Berson Construction & Trading (a Joint Venture),
Petitioner,

G.R. No. 219792

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
BALTAZAR-PADILLA, JJ.

- versus -

HON. FELIPE M. DE LEON, JR., in his capacity as Chairman of the NATIONAL COMMISSION FOR CULTURE AND THE ARTS (NCCA), HON. ROGELIO L. SINGSON, in his capacity as Secretary of the Department of Public Works and Highways (DPWH), HON. MELANIO C. BRIOSOS, in his capacity as Regional Director of the Department of Public Works and Highways - Regional Office I, and MOST REV. RODOLFO BELTRAN, D.D., Bishop of La Union,

Promulgated:

Respondents.

29 JUL 2020

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RESOLUTION

INTING, J.:

Before the Court is a Petition¹ for *Certiorari* and Prohibition with Prayer for the Issuance of Temporary Restraining Order under Rule 65 under the Rules of Court against the Cease and Desist Order² (CDO) dated February 21, 2015 issued by the National Commission for Culture and the Arts (NCCA), through its Chairman Felipe M. De Leon, Jr. (Chairman De Leon), against the Department of Public Works and Highways (DPWH) enjoining the implementation of the road widening project (project), including demolition works along the national highway in the Municipality of Agoo, Province of La Union. The CDO states that the project will potentially affect presumed important cultural properties in the area and as such, it could not be undertaken without the coordination and concurrence of the NCCA and other pertinent cultural agencies, such as the National Museum or the National Historical Commission of the Philippines.

The Antecedents

In a Letter³ dated April 4, 2014 addressed to the District Engineer, Office of the District Engineer, DPWH, La Union Second District Engineering Office, Acting Assistant District Engineer and Chief of the Maintenance Section, Raul P. Gali (Gali), submitted the following findings and observations:

1. The Basilica of Our Lady of Charity and Plaza de la Virgen are located along the right shoulder of Manila North Road right before and after the MNR — Agoo Beach Road intersection, respectively;
2. That the northern portion of the Basilica's plant boxes measures 9.40meters from the centerline of the national road, while 8.50meters on the opposite side;
3. That the northern portion of the plaza's concrete fence measures 6.90meters from the centerline of the national road, while 9.80meters on the opposite side;
4. That said fence hampers the smooth flow of traffic of northbound vehicles.⁴

Gali stated that the road section is included in the list of proposed road widening for fiscal year 2015 Infrastructure Program; and that the Basilica's plant boxes and concrete fence are within the 20-meter road

¹ *Rollio*, pp. 3-25.

² *Id.* at 29.

³ *Id.* at 50.

⁴ *Id.*

right-of-way (20m RROW) which are considered obstructions under Section 23 of Presidential Decree No. (PD) 17.⁵ Thus, District Engineer Leopoldo F. Mendoza (Mendoza) wrote a Letter⁶ dated April 14, 2014 to Most Rev. Rodolfo F. Beltran, D.D. (Bishop Beltran) requesting for the voluntary removal/relocation of the portions of the structures that encroached the 20m RROW.

On May 23, 2014, Bishop Beltran wrote a Letter⁷ addressed to DPWH Secretary Rogelio L. Singson (Secretary Singson) requesting for reconsideration of the road widening. He cited the following: the improvement should not be at the expense of cultural heritage; bringing the highway closer to the structure would expose it to dangers and hasten its dilapidation; that the provision in DPWH Order No. 52, Series of 2003 stating that “[i]t shall be unlawful for any person to usurp any portion of a right-of-way, to convert any part of any public highway, bridge, wharf or trail to his own private use or obstruct the same in any manner”⁸ should not apply to a property of cultural value and heritage; and that “[o]ne cannot usurp or encroach on anything that has not been there yet when it started to exist.”⁹

On even date, Bishop Beltran wrote another Letter¹⁰ to Chairman De Leon of the NCCA opposing the road widening.

On June 13, 2014, Mendoza wrote another Letter¹¹ addressed to Bishop Beltran reiterating the request for voluntary removal/relocation of the concrete fence; and giving the latter seven days from receipt within which to comply. Bishop Beltran replied in a Letter¹² dated June 20, 2014 requesting for an extension of time to comply, citing the ongoing talks between the DPWH and the NCCA.

On February 21, 2015, the NCCA issued the assailed CDO,¹³ citing Section 5(f) of Republic Act No. (RA) 10066.¹⁴ It states:

⁵ Revised Philippine Highway Act.

⁶ *Rollo*, p. 49.

⁷ *Id.* at 52-53.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 54-55.

¹¹ *Id.* at 59.

¹² *Id.* at 60-61.

¹³ *Id.* at 29.

¹⁴ National Cultural Heritage Act of 2009.

WHEREAS, Section 5(f) of Republic Act No. 10066, otherwise known as the National Cultural Heritage Act of 2009, as reiterated in Section 8.4 of its Implementing Rules and Regulations, has defined that all structure at least fifty (50) years old are considered/presumed Important Cultural Property and is entitled to protection against exportation, modification, or demolition pursuant to Section 5 of the same law;

WHEREAS, NCCA Board Resolution Nos. 2014-443 and 2014-448 have empowered the NCCA to act on cases involving presumed Important Cultural Property;

THEREFORE, by virtue of the power granted by law, the National Commission for Culture and the Arts, through the undersigned, directs the Department of Public Works and Highways (DPWH), through the Secretary of Public Works and Highways the Honorable Rogelio L. Singson, DPWH Undersecretary for Regional Operations the Honorable Romeo S. Momo, and/or the Regional Director of DPWH Regional Office No. 1 Engr. Melanio C. Briosos, to CEASE AND DESIST from implementing the road widening project, inclusive of demolition works, along the national highway in the Municipality of Agoo in the Province of La Union, that will potentially affect presumed Important Cultural Properties in the area, including, but not limited to, Plaza de la Virgen and Agoo Basilica without coordination and concurrence of this Commission and/or the pertinent cultural agency (namely, the National Museum or the National Historical Commission of the Philippines). Failure to comply with this mandate is a criminal offense under RA 10066.

This Order may be served and executed by any Law Enforcement Officer/s.¹⁵

Russell Q. Bernal (petitioner), acting for the Joint Venture, moved for intervention before the NCCA¹⁶ claiming that by virtue of the contract for the project with the DPWH, the order is in fact directed to the Joint Venture. Petitioner alleged that the road widening will not affect or destroy the Basilica Church or the Plaza de la Virgen; that neither the Basilica Church nor the Plaza de la Virgen is a national heritage entitled to the protection being extended by the NCCA; that neither the Basilica Church nor the Plaza dela Virgen can be presumed as an important cultural property for being at least 50 years old; that the extent of the CDO is very extensive when only a portion of the road widening may affect the structures sought to be protected; and that under

¹⁵ *Rollo*, p. 29.

¹⁶ *Id.* at 30-44.

RA 8975,¹⁷ no court, except the Supreme Court, may issue a restraining order and delay a government infrastructure project.

Petitioner later filed a motion¹⁸ before the NCCA to set the case for hearing and to resolve the pending incidents.

Without waiting for NCCA's action, petitioner filed the present petition before the Court.

In its October 5, 2015 Resolution,¹⁹ the Court required respondents to file their respective Comments on the petition.

In its Comment,²⁰ the NCCA alleged that petitioner, as a private contractor of DPWH, has no substantive legal right to question the CDO; and that petitioner is not directly aggrieved by the CDO because it was not issued against him, but against the DPWH. The NCCA informed the Court that the case on the validity of the CDO is still pending before it when petitioner filed its petition. The NCCA further averred that RA 8975 has no application in the case because it refers to lower courts and not to the NCCA; and that the NCCA exercises its mandates by virtue of RA 10066.

In its Comment,²¹ the DPWH alleged that on February 24, 2015, the DPWH Office of the Project Engineer Region I issued Site Instruction No. 1 acknowledging the CDO issued by the NCCA; that there was also an instruction from Secretary Singson to stop work in the portion covered by the CDO and to restore it to its original form; that, however, Site Instruction No. 1 also directed petitioner to start the other portions of the project not covered by the CDO. The DPWH further alleged that petitioner had completed 89.581% of the project and had been paid for such completed work; and that petitioner availed himself of an improper remedy as *certiorari* cannot lie against Secretary Singson or Regional Director Melanio C. Briosos because they do not exercise judicial or quasi-judicial functions.

¹⁷ An Act to Ensure the Expedient Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and For Other Purposes.

¹⁸ See Motion to Set the Case for Hearing, *rollo*, pp. 46-48.

¹⁹ *Id.* at 71-72.

²⁰ *Id.* at 95-106.

²¹ *Id.* at 125-136.

In the Resolution²² dated June 5, 2017, the Court required petitioner to file a Consolidated Reply to the respective Comments of the NCCA and the DPWH. Petitioner failed to comply with the Resolution.

The Issue

Whether the NCCA acted without jurisdiction or with grave abuse of discretion in issuing the assailed CDO against the DPWH.

The Ruling of the Court

The petition should be dismissed.

At the outset, petitioner failed to submit his Consolidated Reply as required by the Court in the Resolution dated June 5, 2017. Petitioner's counsel, likewise, failed to comply with the Court's Resolution²³ dated June 20, 2018 requiring him to show cause why he should not be disciplinarily dealt with or held in contempt for failing to submit his Consolidated Reply, and to comply with the Resolution dated June 5, 2017. The failure alone to comply with the Court's Resolution dated June 5, 2017 and the Resolution dated June 20, 2018, and to file the Consolidated Reply warrants the dismissal of the petition.

In addition, the petition was prematurely filed. The issue of the validity of the CDO is still pending with the NCCA when the present petition before the Court was filed. By resorting to filing the petition before the Court, petitioner preempted the NCCA's action before it can have a final determination on the validity of the CDO it issued. It is not even clear in the petition whether the NCCA granted petitioner's motion for intervention considering that the issue of the CDO is between the NCCA and the DPWH.

The DPWH also pointed out that the CDO only covers a small area of the project awarded to petitioner. The DPWH in fact issued Site Instruction No. 1 on February 24, 2015, three days after the NCCA issued the CDO, directing petitioner to start with the other portions of

²² *Id.* at 171-172.

²³ *Id.* at 180.

the project that were not covered by the CDO. At the time of the filing of DPWH's Comment, petitioner had already completed 89.581% of the project, for which it had already been paid. Petitioner has no reason then to complain that the CDO was very extensive considering that it was given a clearance to proceed with the project, except for the portion covered by the CDO.

Petitioner erroneously invoked RA 8975 to support the petition. RA 8975 prohibits the issuance by all courts, other than the Court, of any temporary restraining orders, preliminary injunctions, or preliminary mandatory injunctions against national government projects.²⁴ Section 3(a) of RA 8975 provides:

SECTION 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions.* — No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

(a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;

x x x x

The NCCA is not a court as contemplated by RA 8975. NCCA's authority to issue a CDO is by virtue of RA 10066. Section 25, Article VII of RA 10066 provides:

SECTION 25. *Power to Issue a Cease and Desist Order.* — When the physical integrity of the national cultural treasures or important cultural properties are found to be in danger of destruction or significant alteration from its original state, the appropriate cultural agency shall immediately issue a Cease and Desist Order *ex parte* suspending all activities that will affect the cultural property. The local government unit which has the jurisdiction over the site where the immovable cultural property is located shall report the same to the appropriate cultural agency immediately upon discovery and shall promptly adopt measures to secure the integrity of such immovable cultural property. Thereafter, the appropriate cultural

²⁴ *Lao, et al. v. LGU of Cagayan de Oro City, et al.*, 818 Phil. 92, 113 (2017).

agency shall give notice to the owner or occupant of the cultural property and conduct a hearing on the propriety of the issuance of the Cease and Desist Order. The suspension of the activities shall be lifted only upon the written authority of the appropriate cultural agency after due notice and hearing involving the interested parties and stakeholders

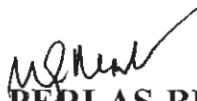
Again, the Court will not rule on the propriety of the Cease and Desist Order, as the matter is still pending before the NCCA.

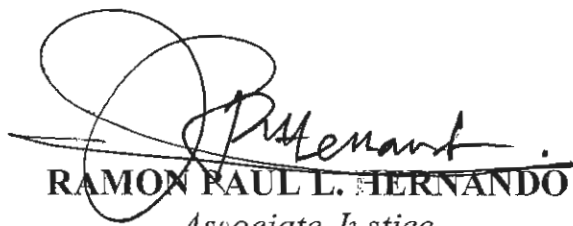
WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


RAMON PAUL L. HERNANDO
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice


PRISCILLA J. BALTAZAR-PADILLA
Associate Justice



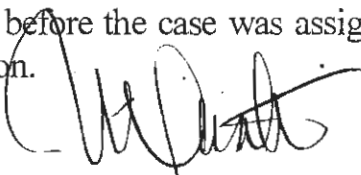
ATTESTATION

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


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

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


DIOSDADO M. PERALTA
Chief Justice