



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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THIRD DIVISION

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH) and METROPOLITAN MANILA DEVELOPMENT AUTHORITY (MMDA),
Petitioners,

G.R. No. 243931

Present:

LEONEN, J., *Chairperson,*
 HERNANDO,
 INTING,
 ROSARIO,* and
 LOPEZ, J., *JJ.*

- versus -

POWER ADS INTELLI-CONCEPTS ADVERTISING AND PRODUCTION CORPORATION,
Respondent.

Promulgated:

July 14, 2021

MIS-DCB-H

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DECISION

INTING, J.:

This is a Petition for Review on *Certiorari*¹ filed by the Republic of the Philippines (petitioner), represented by the Department of Public Works and Highways (DPWH) and Metro Manila Development Authority (MMDA), of the Decision² dated June 22, 2018 and the Resolution³ dated December 17, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 148453. The CA affirmed the Orders dated May 11, 2016⁴ and August 12, 2016⁵ of Branch 213, Regional Trial Court (RTC),

* Designated additional member per Special Order No. 2833 dated June 29, 2021.

¹ *Rollo*, pp. 9-34.

² *Id.* at 44-49; penned by Associate Justice Mario V. Lopez (now a member of the Court) with Associate Justices Victoria Isabel A. Paredes and Zenaida T. Galapate-Laguilles, concurring.

³ *Id.* at 51-52.

⁴ *Id.* at 364-370; penned by Judge Carlos A. Valenzuela.

⁵ *Id.* at 371-372.

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Mandaluyong City in Civil Case No. MC12-6032.

The Antecedents

On August 31, 2010, the DPWH and the MMDA entered into a Memorandum of Agreement⁶ (MOA) wherein the DPWH deputized the MMDA to enforce the provisions on regulated signs under Chapters 8 and 20 of Presidential Decree No. (PD) 1096, also known as “National Building Code of the Philippines” and Rules VIII and XX of the Implementing Rules and Regulations (IRR) of PD 1096 within Metro Manila. Accordingly, the MMDA passed Memorandum Circular No. 10, Series of 2011,⁷ or the implementing guidelines on the issuance of clearances for all advertising materials along the major thoroughfares in Metro Manila. Later, the MMDA sent a notice to Power Ads Intelli-Concepts Advertising and Production Corporation (Power Ads) to demolish within 10 days from notice its billboard located at No. 81-B, 29th Street, C-5, Brgy. West Rembo, Makati City because it was constructed without the necessary clearance and permit.⁸

Aggrieved, Power Ads filed a Petition⁹ for Prohibition and Injunction with Prayer for Temporary Restraining Order (TRO) and Writ of Preliminary Injunction against the DPWH and MMDA before the RTC. Power Ads assailed the validity of the following regulations for being an undue delegation of rule-making power: (1) Memorandum Circular No. 10, Series of 2011; and (2) MMDA Regulation No. 04-004, Series of 2004¹⁰ which prescribed the “guidelines on the installation and display of billboards and advertising signs along major and secondary thoroughfares, avenues, streets, roads, parks and open spaces within Metro Manila and providing penalties for violation thereof.” Power Ads sought to restrain the MMDA from dismantling its billboard.¹¹

⁶ *Id.* at 53-55.

⁷ *Id.* at 66-77; Implementing Guidelines of MMDA Regulation No. 04-004, Series of 2004, The Memorandum of Agreement Between the Department of Public Works and Highways and the Metropolitan Manila Development Authority dated August 31, 2010, and the May 19, 2011 Agreement Between the Department of Public Works And Highways and the Metropolitan Manila Development Authority Concerning Clearances and Permits for Billboards and Advertising Signs Along Major And Secondary Thoroughfares, Avenues, Streets, Roads, Parks and Open Spaces Within Metropolitan Manila.

⁸ *Id.* at 44.

⁹ *Id.* at 79-100.

¹⁰ *Id.* at 56-63.

¹¹ *Id.* at 45.

On January 20, 2012, the RTC granted the prayer for TRO.¹²

Thereafter, Power Ads sought to amend its complaint twice.

The DPWH and the MMDA filed their Answer¹³ dated May 23, 2012 on the same day that Power Ads first sought to amend its complaint.¹⁴

Subsequently, Power Ads filed a Motion for Leave to File Second Amended Petition¹⁵ with attached Second Amended Petition¹⁶ to implead the City Building Official of Makati City (City Building Official) as an additional respondent. Power Ads alleged that the MMDA, in an attempt to circumvent the TRO issued by the RTC, has resorted to the tactic of causing the Office of the Building Official of Makati City (OBO-Makati) to issue demolition orders which the MMDA attempted to enforce using the combined forces of the MMDA and the local government.¹⁷

The RTC then granted the Motion for Leave to File Second Amended Petition and admitted the Second Amended Petition.¹⁸

The City Building Official, on the one hand, and the DPWH and the MMDA, on the other hand, filed their Answer and Amended Answer,¹⁹ respectively.²⁰

Subsequently, the RTC held hearings on respondent's application for the issuance of a writ of preliminary injunction.²¹

Power Ads presented Narciso Francelizo and Connie Erispe to support its application. On the other hand, the DPWH and the MMDA presented Noemie T. Recio and Edgardo Lara as their witnesses; while

¹² *Id.* at 130-133.

¹³ *Id.* at 192-220.

¹⁴ *Id.* at 166-191.

¹⁵ *Id.* at 222-225.

¹⁶ *Id.* at 226-250.

¹⁷ *Id.* at 231.

¹⁸ *Id.* at 17.

¹⁹ *Id.* at 251-281.

²⁰ *Id.*

²¹ *Id.* at 18, 555.

the City Building Official presented Engr. Ruel B. Almazan (Engr. Almazan) as its lone witness.²²

On May 11, 2016, the RTC issued a writ of preliminary injunction.²³ The Order²⁴ dated May 11, 2016 states:

WHEREFORE, premises considered, the application for the issuance of a writ of preliminary injunction is hereby GRANTED.

In view thereof, effective immediately and pending the outcome of the main petition for permanent prohibition and injunction and nullity of MMDA Memorandum Circular No. 10 xxx, let a Writ of Preliminary Injunction be issued to enjoin respondents xxx from damaging or rendering non-operational petitioner's billboards, x x x either by dismantling the structure or rolling down or stripping down the advertising materials attached on said billboards, x x x.

x x x x

SO ORDERED.²⁵

Dissatisfied, the DPWH and the MMDA moved for the dissolution of the writ of preliminary injunction arguing that Power Ads failed to show a clear legal right worthy of protection and that it did not stand to suffer grave and irreparable injury. However, in its Order dated August 12, 2016, the RTC denied the motion.²⁶

The DPWH and the MMDA separately filed their respective motions for reconsideration. The RTC denied both motions in its Order dated August 12, 2016.²⁷

Aggrieved, the Republic filed a Petition for *Certiorari* (With Application for the Issuance of a [TRO] and/or Writ of Preliminary Injunction)²⁸ before the CA imputing grave abuse of discretion on the part of the RTC in granting the injunctive relief.

²² *Id.* at 402-403.

²³ *Id.* at 45.

²⁴ *Id.* at 364-370.

²⁵ *Id.* at 368-369.

²⁶ *Id.* at 45.

²⁷ *Id.* at 371.

²⁸ *Id.* at 373-399.

Ruling of the CA

In its Decision²⁹ dated June 22, 2018, the CA denied the petition. It found no grave abuse of discretion on the part of the RTC in enjoining the DPWH and the MMDA from dismantling the billboard of Power Ads.³⁰

The CA ruled that Power Ads satisfied the standards for the issuance of a writ of preliminary injunction. The CA found that based on the records, Ads and Signs Advertising, Inc. (Ads and Signs) obtained a valid clearance and permit over the billboard in 2001 and assigned it to Power Ads in 2006, or prior to the issuance of the Memorandum Circular No. 10, Series of 2011. As a successor-in-interest, Power Ads acquired a vested property right, an actual right that cannot be taken away without due process.³¹

According to the CA, Power Ads averred a material invasion of its ostensible right, for which the writ of preliminary injunction was necessary. Specifically, the MMDA issued Power Ads on December 29, 2011 a notice to remove its billboard within 10 days. Thereafter, on January 18, 2012, MMDA representatives went to the site and ordered the caretaker to dismantle the billboard. Immediately, Power Ads filed on the same day a petition for prohibition and injunction with the RTC which granted a TRO. On March 4, 2012, however, the MMDA requested the assistance of the OBO-Makati which then issued on April 4, 2012 another notice of demolition to Power Ads. Thereafter, on June 11, 2012, MMDA representatives, armed with a tow truck and acetylene torches, assisted by the OBO-Makati personnel, attempted to roll down the billboard. This constrained Power Ads to urgently move for the issuance of a writ of preliminary injunction and to implead the local government in its amended petition. Clearly, Power Ads was left with no justifiable recourse but to seek relief from the courts because what the DPWH and MMDA sought to restrict was the very essence of its activity as a business engaged in advertising via billboards.³²

The CA further held that considering the urgency of the situation

²⁹ *Id.* at 44-49.

³⁰ *Id.* at 48.

³¹ *Id.* at 46.

³² *Id.* at 46-47.

and the threatened irreparable injury resulting from the attempt to deprive Power Ads of its property, the RTC acted well within its competence when it required the DPWH and the MMDA to temporarily desist, pending a more complete and circumspect estimation of the parties' rights. The CA added that prudence dictated the preservation of the *status quo* given that Power Ads questioned the validity of Memorandum Circular No. 10, Series of 2011.³³

The dispositive portion of the Decision provides:

FOR THESE REASONS, the petition is DENIED. The assailed Orders dated May 11, 2016 and August 12, 2016 of the Regional Trial Court are AFFIRMED without prejudice to the ultimate disposition of Civil Case No. MC-12-6032.

SO ORDERED.³⁴

The Republic, represented by the Office of the Solicitor General (OSG), filed a motion for reconsideration. The CA denied it in its Resolution³⁵ dated December 17, 2018.

Hence, the instant petition.³⁶

The Petition

The Republic argues that the CA committed a reversible error when it affirmed the Orders dated May 11, 2016 and August 12, 2016 of the RTC because the issuance of the writ of preliminary injunction against the Republic is contrary to law and jurisprudence.³⁷

Specifically, the Republic argues that:

First, Power Ads failed to show that it has a clear legal right to construct the subject billboard because the Republic has adequately shown that Power Ads did not have the requisite building permit to

³³ *Id.* at 47.

³⁴ *Id.* at 48.

³⁵ *Id.* at 51-52.

³⁶ *Id.* at 9-37.

³⁷ *Id.* at 21-22.

install the subject billboard. Specifically, Engr. Almazan, a building inspector from the OBO-Makati, testified before the RTC that his office did not issue any building permit in favor of Power Ads, or any other person or entity for that matter. Engr. Almazan further testified that Building Permit No. SB09-01-1271 which was allegedly issued to Ads and Signs, relied upon by Power Ads, is spurious because his office did not issue such building permit. He explained that the serial number indicated in the building permit was issued to Nokia Philippines, Inc. for the proposed renovation of its 40th floor in Paseo de Roxas, Makati City and not at No. 81-B, 29th street, C-5 Road, Brgy. West Rembo, Makati City, where the subject billboard is located. Moreover, the date of issuance of the building permit was issued ahead of the date of application. Consequently, the aforesaid building permit is obviously fake or manufactured.³⁸

Furthermore, Power Ads cannot use the building permit allegedly issued to Ads and Signs because Power Ads has a separate and distinct personality from said corporation.³⁹

Also, Power Ads has no vested right to construct the subject billboard that would warrant the protection of an injunctive writ considering that the installation or construction of a billboard along public streets, roads, or highways is merely a statutory privilege granted by the State and may be exercised only in the manner and in accordance with the provisions of PD 1096 and its IRR.⁴⁰

Second, there is no material and substantial violation of Power Ads' alleged right which the Republic has supposedly violated. The Republic merely implemented the provisions of PD 1096 as amended and its IRR when it ordered Power Ads to remove or dismantle the subject billboard. The Republic emphasized that in its Letter dated April 4, 2012, the OBO-Makati has informed Power Ads that the subject billboard was constructed without the required building permit. In addition, it was declared as a nuisance, a ruinous and dangerous structure, and violative of Section 301 and Rule VII of PD 1096 and its IRR. Its demand, however, fell on deaf ears as respondent continued its operation up to the present despite the absence of a building permit.⁴¹

³⁸ *Id.* at 24-27.

³⁹ *Id.* at 27.

⁴⁰ *Id.*

⁴¹ *Id.* at 28-29.

Third, Power Ads has not shown that it will suffer an irreparable injury if the writ of preliminary injunction is not issued. The damages alleged by Power Ads in its Second Amended Petition, *i.e.*, (1) the cost of construction; (2) loss of income as commercial sponsors would immediately cease payments; and (3) its potential liability with the owners of lots or establishments with whom respondent has existing contracts of lease with—are all quantifiable or capable of pecuniary estimation, and thus, fully compensable by damages. At the same time, Power Ads did not include in its Second Amended Petition any prayer for damages against the Republic. As such, the RTC cannot grant a relief not prayed for in the pleadings.⁴²

In its Respondent's Comment,⁴³ Power Ads argues that the Republic failed to prove that the RTC committed grave abuse of discretion in issuing the Orders dated May 11, 2016 and August 12, 2016.⁴⁴

Specifically, Power Ads argues that:

First, the Republic has a plain, speedy, and adequate remedy other than outright demolition—and that is to allow Power Ads to comply with the requirements of the City of Makati on the matter of the construction and operation of billboards. This, Power Ads is already doing to comply with PD 1096. In fact, Power Ads is already directly engaged in off-court negotiations with the OBO-Makati on how it might comply with the new ordinance. Further, in connection with the requirements, the moratorium on the construction of billboards imposed by the City of Makati cannot be applied retroactively to Power Ads' property because City Ordinance No. 2004-A-028, otherwise known as "An Act Imposing a Moratorium on the Construction and Installation of Billboards in Makati City and Providing Penalty for Violation Thereof," was promulgated in 2004. On the other hand, respondent's billboard has been in existence since 2001. Nevertheless, the City of Makati has already lifted its moratorium on the installation of billboards and opted for regulation, by passing Ordinance No. 20130-A-044, entitled "Billboard and Signage Ordinance of Makati City" which took effect in June 30,

⁴² *Id.* at 29-30.

⁴³ *Id.* at 551-576.

⁴⁴ *Id.* at 575.

2014. Thus, because the moratorium on the installation of billboards has already been lifted, DPWH's insistence on the demolition of Power Ads' billboard is already moot.⁴⁵

Second, the DPWH, the administrative agency tasked by the Legislature with the administration and enforcement of PD 1096, unlawfully delegated its power to regulate billboard to the MMDA by way of a MOA dated August 31, 2010. On the basis of the MOA, the MMDA promulgated the questioned regulations namely: (1) MMDA Memorandum Circular No. 10, Series of 2011 and (2) MMDA Regulation No. 04-004, Series of 2004.⁴⁶

The issuances of the MMDA constitute an invalid delegation of powers because the MOA did not authorize the MMDA to come up with its own rules and regulations which abolish the due process provisions of the PD 1096, its IRR, and the DPWH's own Additional Rules and Regulations (ARR) on Signs or Signboard Structures. Further, the MOA did not impose limits on the MMDA's exercise of discretion on the matter of the abatement of billboards.⁴⁷

Third, the MMDA's acts of regulating billboards by arbitrary means including force, are unlawful for violating the due process clause. If a billboard operator is found to be violating the conditions of its permits, paragraph 8 of the ARR provides for an administrative procedure for abatement or demolition. The requirement of due process is exhaustive as it affords the owner of an errant billboard the right to avail himself of administrative remedies before the ultimate penalty of abatement or destruction. However, the MMDA did not follow the procedure in paragraph 8 of the ARR when it launched its Operation *Baklas* Billboard, commanding billboard owners, including Power Ads, to demolish their properties within 10 days without a hearing, and carrying out the demolition itself at the end of the 10-day period.⁴⁸

Fourth, the MMDA has no power to regulate billboards under its own charter as illustrated in *Metropolitan Manila Development Authority v. Trackworks Rail Transit Advertising, Vending and*

⁴⁵ *Id.* at 557-559, 572.

⁴⁶ *Id.* at 559-560.

⁴⁷ *Id.* at 561.

⁴⁸ *Id.* at 562-564.

*Promotions, Inc.*⁴⁹ (*Trackworks*), a case decided by the Court in 2009. Further, as held in *Metropolitan Manila Dev't. Authority v. Garin*,⁵⁰ the MMDA is not vested with police power, let alone legislative power, and all of its functions are administrative in nature.⁵¹

Fifth, under present regulations, Power Ads does not need to obtain a building permit for its own billboard because it was constructed prior to October 31, 2007, the date of promulgation of the ARR. Under Section 4.2.5 of the ARR, for existing free-standing or roof-mounted off-premise signs or signboard structures with or without a current building permit, all that needs to be presented is a certificate from an engineer that the billboard is structurally sound. This, respondent was able to present.⁵²

Sixth, Power Ads' building permit is not spurious. Engr. Almazan made serious misrepresentations because Power Ads has a copy of Sogo Hotel's building permit (No. SB09-01-1183) which is different from that confirmed by him. The evidence will be presented during trial on the merits before the RTC. Further, Power Ads is merely the successor-in-interest to Ads and Signs by way of the deed of transfer of shares and deed of assignment and transfer of rights in favor of Power Ads. Power Ads notes that it never marked or introduced as evidence any spurious building permit during the proceedings on the application for writ of preliminary injunction. Thus, there was no attempt on the part of Power Ads to mislead the court. Also, after Power Ads acquired its right to the site of the billboard structure sometime in 2006, Power Ads applied for a building permit with the City of Makati but none was issued in the light of the moratorium. Also, the OBO-Makati's use of conflicting permit numbers in its Certification as cited by the Republic potentially invalidates said evidence.⁵³

Seventh, the writ of preliminary injunction which was issued by the RTC in favor of Power Ads is valid, lawful, and necessary to protect its rights after several attempts at extortion and destruction of its billboards by MMDA personnel. Power Ads maintains that its right to maintain, operate, and earn income from the billboard structure is under

⁴⁹ 623 Phil. 236 (2009).

⁵⁰ 496 Phil. 82 (2005).

⁵¹ *Rollo*, pp. 564-569.

⁵² *Id.* at 569.

⁵³ *Id.* at 570-571.

threat of termination and destruction by the MMDA. The damages suffered by Power Ads cannot be compensated merely in money.⁵⁴

Thereafter, the Republic filed its Reply (To Respondent's Comment dated 30 December 2019).⁵⁵

Issue

To simplify, the Court finds that the sole issue in this case is whether the CA erred in not finding grave abuse of discretion on the part of the RTC when it issued a writ of preliminary injunction in favor of Power Ads.

The Court's Ruling

Preliminarily, the Court notes that in the Letter⁵⁶ dated January 29, 2019, MMDA Chairman Danilo Lim (Chairman Lim) expressed to the OSG his position not to appeal the Decision and Resolution of the CA. Chairman Lim explained that "looking at the chances of having this ruling overturned—its litigation would only take away time, effort and resources from this Authority. It would be more beneficial to the government if our time, effort and resources be spent for the public we serve."⁵⁷

Power Ads did not take issue with the Letter dated January 29, 2019 in its Comment. Nevertheless, the Court deems it prudent to discuss that despite MMDA's position, the Court finds no infirmity in the filing of the petition.

Under Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987,⁵⁸ the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of a lawyer. Section 35 provides in part:

⁵⁴ *Id.* at 572-575.

⁵⁵ *Id.* at 655-666.

⁵⁶ *Id.* at 38.

⁵⁷ *Id.*

⁵⁸ Executive Order No. 292, Series of 1987, approved on July 25, 1987.

SECTION 35. *Powers and Functions.* — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; *represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.*

x x x x (Italics supplied.)

In *Sec. Orbos of DOTC v. Civil Service Commission*,⁵⁹ the Court ruled that the practice of government agencies in declining the services of the OSG should be stopped and that the OSG should be allowed to faithfully discharge its duties as the government advocate. The Court ruled:

There are cases where a government agency declines the services of the Solicitor General or otherwise fails or refuses to forward the papers of the case to him for appropriate action. The Court finds and so holds that this practice should be stopped. To repeat, the Solicitor General is the lawyer of the government, any of its agents and officials in any litigation, proceeding, investigation or matter requiring the services of a lawyer. The exception is when such officials or agents are being charged criminally or are being civilly sued for damages arising from a felony. His services cannot be lightly rejected, much less ignored by the office or officials concerned.

Indeed, the assistance of the Solicitor General should be welcomed by the parties. He should be given full support and cooperation by any agency or official involved in litigation. He should be enabled to faithfully discharge his duties and responsibilities as the government advocate. And he should do no less for his clients. His burden of assisting in the fair and just administration of justice is clear.

⁵⁹ 267 Phil. 476 (1990).

This Court does not expect the Solicitor General to waver in the performance of his duty. As a matter of fact, the Court appreciates the participation of the Solicitor General in many proceedings and his continued fealty to his assigned task. He should not therefore desist from appearing before this Court even in those cases he finds his opinion inconsistent with the Government or any of its agents he is expected to represent. The Court must be advised of his position just as well.⁶⁰

Verily, the OSG should not be hindered from performing its mandate to defend the interests of the Government before the courts by the mere refusal of the government agency it represents to engage or continue engaging its services.

Now, as to the merits of the case.

A writ of preliminary injunction is defined as “an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction.”⁶¹ It is aimed to “[p]revent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated. Its sole aim is to preserve the status quo until the merits of the case can be heard fully.”⁶²

Section 3, Rule 58 of the Rules of Court provides for the instances when a preliminary injunction may be granted by the court where the action is pending, thus:

SEC. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of act or acts, either for a limited period or perpetually;

⁶⁰ *Id.* at 484-485.

⁶¹ Section 1, Rule 58 of the Rules of Court.

⁶² *Department of Public Works and Highways v. City Advertising Ventures Corporation*, 799 Phil. 47, 62 (2016), citing *First Global Realty and Development Corporation v. San Agustin*, 427 Phil. 593, 601-602 (2002), further citing *Republic of the Philippines v. Silerio*, 338 Phil. 784, 791-792 (1997), and *Spouses Crystal v. Cebu International School*, 408 Phil. 409, 420-422 (2001).

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Jurisprudence provides the following requisites in order that a writ of preliminary injunction may issue:

- (1) the applicant must have a clear and unmistakable right, that is a right *in esse*;
- (2) there is a material and substantial invasion of such right;
- (3) there is an urgent need for the writ to prevent irreparable injury to the applicant; and
- (4) no other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.⁶³

In *DPWH, et al. v. City Advertising Ventures Corp.*,⁶⁴ the Court ruled that in satisfying the above-stated requisites, parties applying for a writ of preliminary injunction only need to establish their claims by *prima facie* evidence and not complete and conclusive evidence.⁶⁵ The Court quoted its pronouncement in *Republic of the Philippines v. Judge Evangelista*⁶⁶ in this wise:

It is crystal clear that at the hearing for the issuance of a writ of preliminary injunction, *mere prima facie evidence is needed* to establish the applicant's rights or interests in the subject matter of the main action. It is not required that the applicant should conclusively show that there was a violation of his rights as this issue will still be fully litigated in the main case. Thus, an applicant for a writ is required *only to show that he has an ostensible right to the final relief prayed for* in his complaint.⁶⁷ (Italics supplied.)

⁶³ *Id.* at 63, citing *Marquez v. Sanchez*, 544 Phil. 507, 517-518 (2007). See also *Bicol Medical Center, et al. v. Botor, et al.*, 819 Phil. 447, 458 (2017).

⁶⁴ 799 Phil. 47 (2016).

⁶⁵ *Id.* at 64.

⁶⁶ 504 Phil. 115 (2005).

⁶⁷ *Id.* at 123.

In *Bicol Medical Center, et al. v. Botor, et al.*,⁶⁸ the Court explained that “[p]rima facie evidence is evidence that is not rebutted or contradicted, making it good and sufficient on its face to establish a fact constituting a party’s claim or defense.”⁶⁹

Further, in the 2005 case of *MMDA v. Trackworks Rail Transit Advertising, Vending and Promotions, Inc.*,⁷⁰ wherein the Court was confronted with the issue of whether or not the trial court gravely abused its discretion in issuing the writ of preliminary injunction, the Court ruled that “while a clear showing of the right is necessary, its existence need not be conclusively established. x x x The evidence need only be a ‘sampling’ intended to give the court an idea of the justification for the preliminary injunction, pending judgment on the merits.”

Equally important, it must be emphasized that where there is doubt or dispute as to the plaintiff’s right, a preliminary injunction should not issue. *The possibility of irreparable damage on the part of the plaintiff absent any proof of an actual existing right would not warrant the issuance of a writ of preliminary injunction.*⁷¹ The Court ruled in *Sps. Nisce v. Equitable PCI Bank, Inc.*:⁷²

The plaintiff praying for a writ of preliminary injunction must further establish that he or she has a present and unmistakable right to be protected; that the facts against which injunction is directed violate such right; and there is a special and paramount necessity for the writ to prevent serious damages. In the absence of proof of a legal right and the injury sustained by the plaintiff, an order for the issuance of a writ of preliminary injunction will be nullified. Thus, where the plaintiff’s right is doubtful or disputed, a preliminary injunction is not proper. The possibility of irreparable damage without proof of an actual existing right is not a ground for a preliminary injunction.⁷³

Nevertheless, given the nature of a preliminary injunction and the evidence needed for the courts to grant it, the court’s ruling on the application for preliminary injunction is not conclusive of the principal action which has yet to be decided.⁷⁴

⁶⁸ 819 Phil. 447 (2017)

⁶⁹ *Id.* at 449, citing *Wa-acon v. People*, 539 Phil. 485, 494 (2006).

⁷⁰ 510 Phil. 826 (2005).

⁷¹ *Sps. Nisce v. Equitable PCI Bank, Inc.*, 545 Phil. 138, 160-161 (2007), citing *Medina v. Greenfield Development Corp.*, 485 Phil. 533, 542 (2004).

⁷² *Id.*

⁷³ *Id.*, as quoted in *DPWH, et al. v. City Advertising Ventures Corp.*, *supra* note 64 at 65.

⁷⁴ *Id.* at 161, citing *Saulog v. Court of Appeals*, 330 Phil. 590, 602 (1996). As cited in *DPWH, et al.*

In the case, the Court finds that the CA erred in not finding grave abuse of discretion on the part of the RTC in issuing the writ of preliminary injunction.

First, Power Ads failed to establish by *prima facie* evidence a clear unmistakable right to preserve its billboard structure and prevent its destruction by the MMDA.

In seeking to enjoin the destruction of its billboards, Power Ads claims to have in its favor a building permit which was issued to its predecessor-in-interest, Ads and Signs in 2001. At the same time, Power Ads is assailing the authority of the MMDA to effect demolition of its billboard structure. Thus, it can be deduced that Power Ads' claim to a clear and unmistakable right is two-pronged: (1) that it has a building permit by virtue of the building permit obtained by its predecessor-in-interest, Ads and Signs in 2001; and (2) that it has a right to be protected from demolition as to its billboard structure from MMDA which purportedly has no authority to do so.

However, as to the first prong, there is doubt or dispute as to Power Ads' source of right considering that the City Building Official successfully put into question the existence of the building permit.

A perusal of the records of the case would show that in the course of the proceedings, the City Building Official was impleaded before the RTC as a defendant together with DPWH and MMDA.⁷⁵ During the hearings conducted for the issuance of a writ of preliminary injunction, the City Building Official presented Engr. Almazan, the building inspector of the office since January 1996 up to the present, as its lone witness. Thereafter, the RTC partly admitted its formal offer of exhibits.⁷⁶

As adequately explained by the Republic in its petition, Engr. Almazan testified before the RTC through his Judicial Affidavit⁷⁷ dated

v. *City Advertising Ventures Corp.*, *supra* note 65 at 65.

⁷⁵ *Rollo*, p. 401.

⁷⁶ *Id.* at 403.

⁷⁷ *Id.* at 282-291.

March 13, 2014 that Building Permit No. SB09-01-1271 is spurious because his office did not issue any building permit in favor of Power Ads or any entity in relation to the subject billboard structure. In support thereof, Engr. Almazan presented and identified a Certification dated August 1, 2012 issued by Engr. Nelson B. Morales (Engr. Morales), then City Building Official which states that no building permit was issued by said office to any person or entity regarding the subject billboard.⁷⁸ The Certification states:

CERTIFICATION

This is to certify that Building Permit Number C10-01-1271 dated October 02, 2001 was issued in favor of Nokia Philippines, Inc. for proposed renovation of 40th Floor of Philam Life Tower, Paseo de Roxas Street, Makati City.

However, based on our records on file, the Office of the Building Official did not issue Building Permit No. SB09-01-1271 dated November 23, 2001 in favor of Ads & Signs Advertising, Inc., with address located at 7th floor NDMC Building, 104 Gamboa Street, Legaspi Village, Makati City for installation of signage along C-5 West Rembo, Makati City.

Furthermore, the date of application, November 05, 2001 is in conflict with permit number SB09-01-1271 which is translated as Sign Board September 2001.

Lastly, further verification with our records on file disclosed that no such permit number (SB09-01-1271) was ever issued by this office in favor of any person, entity or corporation. Thus, Permit No. SB09-01-1271 which was allegedly September 2001 was again issued on November 23, 2001.

This certification is being issued for whatever legal purposes it may serve.

ENGR. NELSON B. MORALES
Building Official⁷⁹

⁷⁸ *Id.* at 26; while Engr. Almazan did not expressly identify in his Judicial Affidavit the signature of Engr. Morales in the Certification dated August 1, 2012, he identified the signature of Engr. Morales in the other documents attached to his judicial affidavit such as Memorandum Circular No. 02-2003. He stated that he was familiar with the signature of Engr. Morales because the latter was his former Department Head.

⁷⁹ *Id.* at 348, 363. The Certification dated August 1, 2012 is attached to the petition as Annex "S" and as Exhibit "10-Makati" of the Judicial Affidavit of Engr. Almazan which is attached to the petition as Annex "R." Italics supplied.

It does not escape the attention of the Court that the Certification dated August 1, 2012 mentions two building permits, *i.e.*, Building Permit Number C10-01-1271 and Building Permit No. SB09-01-1271. Thus, the Court understands that this is the context of Power Ads' argument in its Comment that “[t]he Office of the Building Official of Makati City used conflicting Permit Numbers in its Certification cited by petitioners, potentially invalidating said evidence.”⁸⁰

It did not help that the Republic added to the confusion when it averred in its petition that the serial number indicated in “said Building Permit,” apparently referring to Building Permit No. SB09-01-1271, pertains to the building permit issued to Nokia, Philippines, Inc. for the proposed renovation of its 40th floor office in Paseo de Roxas, Makati City and not at 81-B, 29th Street, C-5 Road, Brgy. West Rembo, Makati City where the subject billboard is located. This contradicts the other allegation of the Republic that Building Permit No. SB09-01-1271 is spurious because the OBO-Makati did not issue it at all.

However, to the mind of the Court, the seeming conflict adverted to by Power Ads is not real. It must be noted that in its application for the issuance of a writ of preliminary injunction, Power Ads relied on certain documents which included Building Permit No. SB09-01-1271 issued to Ads and Signs.⁸¹ Thus, for the purpose of determining whether a clear legal right exists on the part of Power Ads which would warrant the issuance of a writ of preliminary injunction, the only material portions of the Certification dated August 1, 2012 are those which pertain to Building Permit No. SB09-01-1271 as shown above. The Certification was clear as to the finding of Engr. Morales that no such building permit designated as Building Permit No. SB09-01-1271 was ever issued by the OBO-Makati in favor of any person, entity, or corporation.

Engr. Almazan was also categorical in his Judicial Affidavit⁸² dated March 13, 2014 as to the circumstances of Building Permit No.

⁸⁰ *Id.* at 571.

⁸¹ *Id.* at 309. See also pp. 111, 173, 245, 389. The OSG's allegation in its petition for *certiorari* filed before the CA that Power Ads relied on Building Permit No. SB09-01-1271 for the issuance of a writ of preliminary injunction is supported by the Complaint, First Amended Petition and Second Amended Petition dated June 20, 2012 filed by Power Ads uniformly stating that “(copies of clearances and building permits issued by the DPWH and the local governments to petitioner's billboards are hereto attached as Annexes “D,” “E,” “F,” and “G.”

⁸² *Id.* at 282-291.

SB09-01-1271 *vis-à-vis* the other building permits which the OBO-Makati included in its investigation. While there were other building permits mentioned in the Judicial Affidavit, *i.e.*, Building Permit No. C10-01-1271 and Building Permit No. S09-01-1183, these pertained to a renovation and signage, the locations of which are different from the location of the subject billboard. Engr. Almazan's Judicial Affidavit provides:

Q37: What other letter, if any, did your office receive after that letter of Martina Vda. De Estrada Perez?

A37: On July 26, 2012, Engr. Nelson B. Morales received a letter from Atty. Lloyd Allain A. Cudal and Atty. Rochelle T. Macapili-Ona of the Legal and Legislative Affairs Staff of MMDA, asking for a confirmation and certification pertaining to Building Permit No. SB09-01-1271, in the name of Ads and Signs Advertising, Inc., allegedly issued by our office on November 13, 2012. I have here a copy of said letter, including the attached Building Permit No. SB09-01-1271.

Counsel to Hon. Court. This letter was previously marked as Exhibit 9-Makati. Building Permit No. SB09-01-1271 was previously marked in evidence as Exhibit 11-Makati.

Q38. Upon receipt of the above letter of MMDA, what action, if any did your office make?

A38. To determine the authenticity and veracity of the building permit allegedly issued in favor of Ads & Signs Advertising, Inc., our office made a research and verification on its files and the following matters and inaccuracies were discovered, to wit:

a) *Building Permit No. C10-01-1271* (in relation to SB09-01-1271) *dated October 2, 2001 was issued in favor of Nokia Philippines, Inc.* for the proposed renovation of the 40th Floor of Philam Life Tower, Paseo de Roxas Street, Makati City. The capital C appearing in the building permit means Commercial while the number 10 refers to the month of October, the number 01 refers to year 2001. The number 1271 is that specific number assigned to a building permit and is not transferrable to other permits. It is a permanent assigned number. It was not issued in favor of Ads & Signs Advertising, Inc.

b) Perusing *Building Permit No. SB-09-01-1271*, it was discovered based on the records on file that *the OBO did not issue Building Permit No. SB-09-01-1271 dated November 23, 2001 in favor of Ads & Signs Advertising, Inc.* with address located at 7th Floor, NDMC Building, 104 Gamboa Street, Legaspi Village, Makati City for installation of signage along C-5 West Rembo, Makati City.

c) The date of application in the building permit, that is November 5, 2001 is in conflict or does not jibe with permit no. SB-09-1271, which exactly means the following: SB (Sign Board), 09 is equivalent to the month of September, 01 is equivalent to year 2001.

d) Thus, it verily shows that while the application was made on November 5, 2001, and the building permit correspondingly issued on November 23, 2001, the Permit itself showed that it was issued on September 2001. meaning, permit number SB09-01-1271 was issued WAY AHEAD of the date of application (November 11, 2001) and dated of issuance (November 23, 2001).

These findings are found in the Certification dated August 1, 2012 issued by the OBO.

Counsel to Hon. Court: The Certification was previously marked as Exhibit 10-Makati.

Q39. From what source of document did your office base its verification and findings?

A39. From our logbook and it showed that the owner, ADS & SIGNS ADVERTISING, INC. was issued *Building Permit No. S09-01-1183* for Signage only sometime on September 14, 2001. *The signage was installed at Hotel Sogo located at Edsa Guadalupe Nuevo, Makati City.*

Counsel to Hon. Court: The above findings were previously marked in evidence as Exhibit 12-Makati.

Q40. Aside from that, what else did your office discover, Mr. Witness.

A40. From the same logbook, the owner, NOKIA PHILS, INC. was issued *Building Permit No. C10-01-1271* on October 2, 2001 *for property renovation of the 40th Floor of Philam Life Tower, Paseo de Roxas, Makati City.*

Counsel to Hon. Court: The above findings were previously marked in evidence as Exhibit 13-Makati.

Q41. Based on the verification and findings of your office, what can you tell us about Building Permit No. SB09-01-1271?

A41. Building Permit No. SB09-01-1271 was not issued by our office and therefore considered a FAKE DOCUMENT.⁸³ (Italics supplied.)

⁸³ *Id.* at 287-288.

As to the second prong of Power Ads' claim to a clear and unmistakable right against the destruction of its billboard structure, a perusal of the records shows that while MMDA's initial attempts to demolish or roll down Power Ads' billboard structure was solely its own making, its subsequent actuations after the issuance of the TRO was in coordination with the OBO-Makati.

Under Section 205 of PD 1096, the Building Official shall be responsible for carrying out the provisions of the stated law. It provides:

SECTION 205. *Building Officials.* — Except as otherwise provided herein, the Building Official shall be responsible for carrying out the provisions of this Code in the field as well as the enforcement of orders and decisions made pursuant thereto.

Due to the exigencies of the service, the Secretary may designate incumbent Public Works District Engineers, City Engineers and Municipal Engineers act as Building Officials in their respective areas of jurisdiction.

The designation made by the Secretary under this Section shall continue until regular positions of Building Official are provided or unless sooner terminated for causes provided by law or decree.

The Court notes that the City Building Official was not yet impleaded when the RTC issued a 72-hour TRO against the MMDA and the DPWH on January 20, 2012. However, certain events transpired thereafter.

Specifically, on April 12, 2012, the OBO-Makati, through Engr. Morales, sent a Letter dated April 4, 2012 to Power Ads informing the latter that the subject billboard was found to have been illegally constructed for the lack of a building permit under Section 301⁸⁴ of PD 1096 and declared to be "nuisance, ruinous, or dangerous." Thus, Engr. Morales ordered Power Ads to remove the subject billboard within 15 days from receipt of the Letter. The Letter dated April 4, 2012 states:

⁸⁴ Section 301 of Presidential Decree No. (PD) 1096 provides:

SECTION 301. *Building Permits.* — No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done.

Attention : Mr. Glenn R. Gatuslao
Chairman

Mr. James Anthony A. Gamboa
President

Subject : Notice of Demolition

Dear Sirs:

This is with regards to the advertising billboard you have illegally constructed at 81-B 29th Street, Barangay West Rembo, this city, which is in violation of Section 301 and Rule VII "Abatement/Demolition of Buildings" of the National Building Code, P.D. 1096 and its Implementing Rules and Regulations, particularly Section 3.7, Sub-Section 3.7.1 "Improper Location" and Section 3.8 "Illegal Construction" and *declared to be nuisance, ruinous or dangerous*.

In view of the above, you are hereby ordered to demolish the illegally constructed advertising billboard within fifteen (15) days from receipt hereof, otherwise, we shall be compelled to demolish and confiscate the materials on site pursuant to the City Ordinance No. 2004-076 "An ordinance giving authority to the City Engineering Department or to its official representative/s to demolish and confiscate all materials from illegally constructed and unsafe advertising structures and billboards in Makati City, subject to all laws and existing legal rules and regulations."

For your strict compliance.

Very truly yours,

ENGR. NELSON B. MORALES
City Building Official⁸⁵

Thereafter, on June 7, 2012, the OBO-Makati sent another Letter dated June 5, 2012 to Power Ads reiterating its previous order to remove the subject billboard.⁸⁶

Power Ads invokes the provisions of the ARR to support its argument that the MMDA's acts of regulating the billboards by arbitrary means are unlawful for violating the due process clause.

⁸⁵ *Id.* at 164. Italics supplied.

⁸⁶ *Id.* at 165.

Notably, the ARR was promulgated and approved on October 31, 2007 by then DPWH Secretary Hermogenes Ebdane, Jr. pursuant to Section 5⁸⁷ of Administrative Order No. 160, Series of 2006⁸⁸ and Section 203⁸⁹ of PD 1096. It served to amplify Rule XX- SIGNS of the Revised IRR of PD 1096.

Power Ads points out that paragraph 8 of the ARR provides for a lengthy procedure governing the abatement/demolition of signs or signboard structures:

8 - PROCEDURE FOR ABATEMENT/DEMOLITION OF SIGNS OR SIGNBOARD STRUCTURES

The following steps shall be observed in the abatement/demolition of sign and signboard structures:

a. *There must be a finding or declaration by the Building Official that the sign or signboard structure is ruinous or dangerous.*

b. *Written notice or advice shall be served upon the service provider, lot or building owner of such finding or declaration, giving him at least fifteen (15) days within which to cause repair, abate, demolish and remove, as the case may be, the ruinous or dangerous sign or*

⁸⁷ Section 5 of Administrative No. 160, Series of 2006 provides:

SECTION 5. *Review of existing laws, rules and regulations.* The DPWH shall review the existing laws, rules and regulations and recommend to Congress appropriate legislation, if any, and/or issue stricter rules and regulations on the construction and maintenance of billboards, including the designation of specific place for the construction of billboards consistent with the National Building Code within fifteen (15) days from effectivity of this Administrative Order.

⁸⁸ Entitled, "Directing the Department of Public Works and Highways (DPWH) to Conduct Field Inspections, Evaluations and Assessments of All Billboards and Determine Those That Are Hazardous and Pose Imminent Danger to Life, Health, Safety and Property of the General Public and to Abate and Dismantle the Same," approved on October 4, 2006

⁸⁹ Section 203 of PD 1096 provides:

SECTION 203. *General Powers and Functions of the Secretary under this Code.* — For purposes of carrying out the provisions of this Code, the Secretary shall exercise the following general powers and functions:

- (1) Formulate policies, plans, standards and guidelines on building design, construction, use occupancy and maintenance, in accordance with this Code.
- (2) Issue and promulgate rules and regulations to implement the provisions of this Code and ensure compliance with policies, plans, standards and guidelines formulated under paragraph 1 of this Section.
- (3) Evaluate, review, approve and/or take final action on changes and/or amendments to existing Referral Codes as well as on the incorporation of other referral codes which are not yet expressly made part of this Code.
- (4) Prescribe and fix the amount of fees and other charges that the Building Official shall collect in connection with the performance of regulatory functions.

signboard structure or any part or portion thereof.

c. *Within the fifteen (15)-day period, the service provider, lot/building owner may, if he so desires, appeal to the DPWH Secretary the finding or declaration of the Building Official and ask that a re-inspection or reinvestigation of the sign or signboard structure be made.*

d. If the appeal is meritorious, the DPWH Secretary may designate a competent representative/s other than the Building Official to undertake the re-inspection or re-investigation of the sign or signboard structure. The representative/s so designated shall make or complete his/their report within a period of thirty (30) days from the date of termination of re-inspection or re-investigation.

e. If after re-inspection, the finding is the same as the original one, the DPWH Secretary, thru the Building Official, shall notify the service provider, lot/building owner, giving him not more than fifteen (15) days from receipt of notice with affirmed finding to make the necessary repair, abatement, demolition and removal of the subject sign or signboard structure or parts thereof, as the case may be.

e.1. If the Building Official has determined that the sign or signboard structure must be repaired or abated, the Order to be issued shall require that all necessary permits therefor be secured and the work physically commenced within fifteen (15) days from the date of issuance of the permits and completed within such reasonable time as may be determined by the Building Official.

e.2. If the Building Official has determined that the sign or signboard structure must be demolished, the Order shall require that the service provider shall demolish the sign or signboard structure within fifteen (15) days from the date of receipt of the Order; that all required permits be secured therefor within the same fifteen (15) days from the date of the issuance of the permits, and that the demolition be completed within such reasonable time as may be determined by the Building Official.

f. The decision of the DPWH Secretary on the appeal shall be final.

g. *Upon failure of the service provider/owner to comply with the Order of the Building Official or of the DPWH Secretary, in case of appeal, to repair, abate, dismantle or remove the sign or signboard structure or any part thereof after fifteen (15) days from the date of receipt of the Order, the Building Official shall cause the structure to be repaired, dismantled or removed, partly or wholly, as the case may*

be, with all expenses therefor chargeable to the owner.

h. The sign structure as repaired or in case of dismantling, the materials gathered after the demolition of the sign or signboard structure shall be held by the OBO until full reimbursement of the cost of repair, dismantling and removal is made by the owner which, in no case, shall extend beyond thirty (30) days from the date of the completion of the repair, dismantling or removal. After such period, said materials of the sign or signboard structure thus repaired, dismantled or removed shall be sold at any public auction to satisfy the claim of the OBO. Any amount in excess of the claim of the government realized from the sale of the sign or signboard structure and/or materials shall be delivered to the owner. (Italics supplied.)

At the risk of repetition, it bears emphasis that the OBO-Makati sent Power Ads a Letter dated April 4, 2012 giving it 15 days to remove the subject billboard with a finding that the structure is a nuisance and is ruinous and dangerous. It sent another Letter dated June 5, 2012 reiterating its previous order to remove the subject billboard structure.

While Power Ads invokes paragraph 8 of the ARR to support its argument that it was deprived of due process, there is no showing that Power Ads appealed the findings of the OBO-Makati to the DPWH in accordance with the invoked procedure. Thus, when the OBO-Makati sought the assistance of the MMDA as regards Power Ads' billboard structure, it cannot be said that the MMDA's action was arbitrary and that the procedure under the ARR was not followed.

The Court is aware of its rulings in both the 2005 and 2009 Decisions in *Trackworks*.

Briefly, the 2005 case involved the validity of the RTC's issuance of the writ of preliminary injunction in favor of respondent therein to restrain MMDA from dismantling the signages, banners, and billboards installed by Power Ads at the Metro Rail Transit (MRT) structure along the Epifanio De los Santos Avenue. In affirming the issuance of the writ, the Court ruled not only that Power Ads was able to establish a clear legal right to be protected by a writ of preliminary injunction and that it stood to suffer an irreparable injury, but also that it successfully raised the issue of MMDA's power to effect the dismantling of the disputed commercial advertisements.⁹⁰

⁹⁰ *MMDA v. Trackworks Rail Transit Advertising, Vending and Promotions, Inc.*, *supra* note 71 at

Further, in the 2009 Decision wherein the Court ruled on the propriety of a permanent injunction against MMDA, the Court ruled that “MMDA simply had no power on its own to dismantle, remove, or destroy the billboards, signages and other advertising media installed on the MRT structure by Trackworks.”⁹¹ The Court also explained that “[it] had the occasion to rule that MMDA’s powers were limited to the formulation, coordination, regulation, implementation, preparation, management, monitoring, setting of policies, installing a system, and administration. Nothing in Republic Act No. 7924 granted MMDA police power, let alone legislative power.”⁹²

However, the factual circumstances in *Trackworks* and in the present case are different. Specifically, unlike the present case, there is nothing in the facts of *Trackworks* as narrated in both the 2005 and 2009 Decisions that the efforts of the MMDA to dismantle therein Power Ads’ billboards was pursuant to a declaration from the City Building Official that the billboards were a nuisance and were ruinous and dangerous, and that a Notice of Demolition was issued by the City Building Official to respondent.

Evidently, the Court’s previous pronouncement that the MMDA has no power to regulate billboards under its own charter will not tilt the present case in favor of Power Ads considering that as discussed, MMDA’s subsequent efforts to dismantle the billboard structure of Power Ads were upon the declarations made by the OBO-Makati. These declarations constitute regulatory acts on Power Ads’ billboard structure which were within the power of the OBO-Makati to do so.

Notably, the RTC Order dated May 11, 2016 which granted the application for the issuance of a writ of preliminary injunction is, upon a closer look, devoid of any justification as to the reason for the issuance. The RTC ruled:

In this case, a painstaking study of the allegations of the
petitioner in the Complaint, the testimony of the witnesses presented

833.

⁹¹ *Metropolitan Manila Development Authority v. Trackworks Rail Transit Advertising, Vending and Promotions, Inc.*, *supra* note 50 at 243.

⁹² *Id.* at 244, citing *Metropolitan Manila Devt. Authority v. Bel-Air Village Asso.*, 385 Phil. 586, 607 (2000).

and the documentary evidence submitted by the petitioner *vis a vis* the rebuttal evidence presented by the respondents, this Court found a clear and unmistakable right, which the petitioner was able to establish, to the provisional relief prayed for, i.e., to prevent the respondents from damaging or rendering non-operational its billboards, either by dismantling the structure or rolling down or stripping down the advertising materials attached on said billboards, from pursuing or prosecuting the so-called Operation Roll Down, Baby and from enforcing and implementing MMDA Memorandum Circular No. 10 and Regulation No. 04-004 and other orders and issuances emanating from the same.

This Court also hold [*sic*] that respondents' act of dismantling, demolishing or abatement of petitioner's billboards based on the enforcement of the MMDA Memorandum Circular No. 10 and Regulation No. 04-004 and other orders and issuances emanating from the same is now considered premature since the main petition for permanent prohibition and injunction and nullity of the aforesaid issuances is in issue in this petition.⁹³

While the RTC declared that it made a painstaking study of the allegations and the evidence presented, it rang hollow of any evaluation as to the evidence presented by the parties. Specifically, it ignored the evidence presented by the City Building Official which casts doubt on the existence of the building permit issued in favor of Power Ads' predecessor-in-interest.

It is well settled that "the grant or denial of a writ of preliminary injunction. . .rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of fact left to the said court for its conclusive determination."⁹⁴ However, the grant or denial of a writ of preliminary injunction must not be tainted by grave abuse of discretion. Otherwise, the appropriate appellate court may interfere with the exercise of such discretion.⁹⁵

In the case, the Court finds grave abuse of discretion on the part of the RTC in issuing the writ of preliminary injunction despite doubts as to the presence of a clear and unmistakable right on the part of Power Ads to maintain its billboard structure.

⁹³ *Rollo*, p. 405.

⁹⁴ *Sps. Lim, et al. v. Court of Appeals, et al.*, 763 Phil. 328, 337 (2015).

⁹⁵ *Id.*, citing *Australian Professional Realty, Inc. v. Municipality of Padre Garcia, Batangas Province*, 684 Phil. 283, 293 (2012).

Second, Power Ads cannot rely on Section 4.2.5 of the ARR to the effect that it has met the requirements for the ministerial grant of a building permit. Section 4.2.5 of the ARR provides:

4- DESIGN, CONSTRUCTION, SUPPORTS AND ANCHORAGE

4.2.5. Existing free-standing or roof mounted off-premise signs or signboard structures with or without a current building permit *and which have not been found or declared to be dangerous or ruinous* may continue to operate and be issued the appropriate building, sign/signboard, attachment permit upon submission of the appropriate certification by a duly accredited structural engineer that the free-standing or roof mounted off-premise sign or signboard structure is structurally safe; provided, that a DPWH Clearance is issued to the service provider and the corresponding penalties, fines and building permit fees are paid. The issuance of the clearance, building, sign and other permits shall be ministerial once an endorsement has been issued by the DPWH Secretary or his authorized representative[.] (Italic supplied.)

Section 4.2.5 of the ARR provides that for existing free-standing or roof mounted off-premise signs or signboard structures with or without a current building permit and *which have not been found or declared to be dangerous or ruinous*, upon submission of certain requirements, the issuance of the clearance, building, sign and other permits shall be ministerial once an endorsement has been issued by the DPWH Secretary or his authorized representative. Thus, existing free-standing or roof mounted off-premise signs or signboard structures, which have been found or declared to be dangerous or ruinous do not merit the issuance of the clearance, building, sign and other permits even if the other requirements under Section 4.2.5 of the ARR are met.

As in the case, Power Ads' right to a building permit in its own name is again put into question by the Letter dated April 4, 2012 from the OBO-Makati to the effect that Power Ads' billboard structure is a nuisance and is ruinous and dangerous. As clearly provided in Section 4.2.4 of the ARR, such finding negates a right to the issuance of a building permit.

Third, the Court finds no merit in Power Ads' argument that the

insistence of DPWH on the demolition of Power Ads' billboard is already moot purportedly because the moratorium on the installation of billboards in Makati has already been lifted by the enactment of Ordinance No. 2013-A-044, entitled "Billboard and Signage Ordinance of Makati City."

In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*,⁹⁶ the Court explained:

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.⁹⁷

The Court agrees with the OSG that the enactment of Ordinance No. 2013-A-044⁹⁸ did not render the Petition for Review on *Certiorari* moot. A perusal of Ordinance No. 2013-A-044 shows that it merely prescribes the rules and regulations of operating billboards within the City of Makati. As correctly argued by the OSG, there is nothing in the ordinance that establishes the legal right of Power Ads over the subject billboard structure or exempts it from complying with the provisions of PD 1096 particularly the requirement of a building permit under Section 301 thereof. Further, it is a basic rule that an ordinance cannot contravene a statute.⁹⁹ Thus, Ordinance No. 2013-A-044, a local ordinance cannot amend and must not contravene the provisions of PD 1096.

WHEREFORE, the petition is **GRANTED**. The Decision dated June 22, 2018 and the Resolution dated December 17, 2018 of the Court of Appeals in CA GR. SP No. 148453 are **REVERSED** and **SET ASIDE**. A new judgment is hereby entered as follows:

⁹⁶ 728 Phil. 535 (2014).

⁹⁷ *Id.* at 540. Citations omitted.

⁹⁸ *Rollo*, pp. 609-633.

⁹⁹ *Mayor Magtajas v. Pryce Properties, Corp., Inc.*, 304 Phil. 428, 446 (1994).

(1) the Orders dated May 11, 2016 and August 12, 2016 of the Regional Trial Court are **ANNULLED**; and


(2) the Writ of Preliminary Injunction issued in Civil Case No. MC12-6032 is **DISSOLVED**.

SO ORDERED.

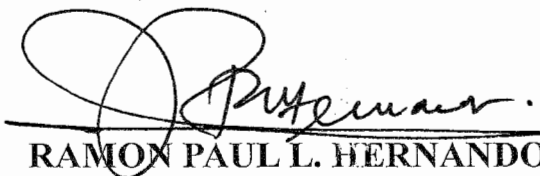


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:




MARVIC M.V.F. LEONEN
Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice

ATTESTATION

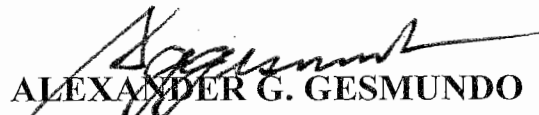
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
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 Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ALEXANDER G. GESMUNDO
Chief Justice



