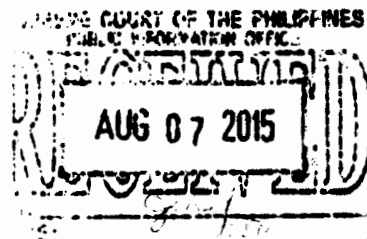




Republic of the Philippines  
**Supreme Court**  
 Manila



FIRST DIVISION

**LEONCIO ALANGDEO,**  
**ARTHUR VERCELES, and**  
**DANNY VERGARA,**

**G.R. No. 206423**

Petitioners,

Present:

- versus -

SERENO, C.J., Chairperson,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 PEREZ, and  
 PERLAS-BERNABE, JJ.

**The City Mayor of Baguio, HON. BRAULIO D. YARANON (to be substituted by incumbent City Mayor, HON. MAURICIO DOMOGAN), JEOFREY MORTELA, Head Demolition Team, CITY ENGINEER'S OFFICE, and ERNESTO LARDIZABAL,**

Promulgated:

**JUL 01 2015**

Respondents.

X-----X

**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated June 29, 2012 and the Resolution<sup>3</sup> dated March 5, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 87439, which reversed the Decision<sup>4</sup> dated April 27, 2006 of the Regional Trial Court of Baguio City, Branch 60 (RTC) in Civil Case No. 6007-R granting the complaint for injunction filed by herein petitioners Leoncio Alangdeo, Arthur Verceles (Verceles), and Danny Vergara (collectively, petitioners).

<sup>1</sup> Rollo, pp. 38-116.

<sup>2</sup> Id. at 117-132. Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Antonio L. Villamor and Ramon A. Cruz concurring.

<sup>3</sup> Id. at 133-135. Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Manuel M. Barrios and Ramon A. Cruz concurring.

<sup>4</sup> Id. at 167-179. Penned by Judge Edilberto T. Claravall.

### The Facts

On November 13, 2003, respondent Ernesto Lardizabal (Ernesto) filed a complaint for demolition,<sup>5</sup> before the City Engineer's Office<sup>6</sup> of Baguio City (City Engineer's Office), questioning the ongoing construction of a residential structure and garage extension by petitioners on a parcel of land, situated at Barangay Atok Trail, Baguio City (subject property), allegedly owned by Mariano Pangloy and Ernesto's father, Juanito Lardizabal.<sup>7</sup> Upon investigation, the City Engineer's Office found out that the construction had **no building permit**. Consequently, the City Mayor issued, through the Secretary to the Mayor, **Demolition Order No. 05, series of 2005** (DO No. 05) directing the City Demolition Team to **summarily demolish** the said structures, to wit:<sup>8</sup>

WHEREFORE, the CITY DEMOLITION TEAM is hereby directed to **SUMMARILY DEMOLISH** the aforesaid structures of Atty. Leoncio Alangdeo, Arthur Verceles and/or Danny Vergara **in accordance with Section 3[,] par. 2.5 (a) of the implementing rules and regulations governing summary eviction** jointly issued by the Department of Interior and Local Government (DILG) and the Housing and Urban Development Coordinating Council pursuant to **Section 44, [A]rticle XII of [Republic Act (RA) No. 7279<sup>9</sup>]**. (Emphases supplied)

Aggrieved, petitioners moved for a reconsideration of DO No. 05, but was denied by the City Mayor. Thus, they were prompted to file a complaint for injunction and prohibition with the RTC, docketed as Civil Case No. 6007-R, seeking to enjoin the implementation of said order.<sup>10</sup>

In their complaint, petitioners applied for a temporary restraining order, which was granted by the RTC. Subsequently, the RTC issued a writ of preliminary injunction pending the final determination of the merits of the case.<sup>11</sup>

During trial, Verceles testified, among others, that he has a Tax Declaration and a pending application for Ancestral Land Claim over the subject property filed before the National Commission on Indigenous Peoples (NCIP), and that he has been paying taxes therefor and occupying the same since 1977.<sup>12</sup> He also testified that Ernesto had previously filed a case with the Office of the Department of Environment and Natural

<sup>5</sup> Not attached to the *rollo*.

<sup>6</sup> In the RTC Decision, said complaint was filed before the Office of the City Mayor. (see *rollo*, pp. 172 and 175.)

<sup>7</sup> *Id.* at 9.

<sup>8</sup> See *id.* at 9-10.

<sup>9</sup> Entitled "AN ACT TO PROVIDE FOR A COMPREHENSIVE AND CONTINUING URBAN DEVELOPMENT AND HOUSING PROGRAM, ESTABLISH THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES" (approved March 24, 1992).

<sup>10</sup> *Rollo*, p. 11.

<sup>11</sup> *Id.* at 171.

<sup>12</sup> *Id.* at 171-172.

Resources (DENR)-Cordillera Administrative Region (CAR), questioning his possession thereof, as well as, seeking the cancellation of his tax declaration over the said property.<sup>13</sup> The DENR-CAR dismissed the case in his favor, but Ernesto appealed to the Office of the DENR Secretary. At the time the appeal was pending, Ernesto filed the complaint for demolition before the City Engineer's Office. Verceles further testified that Barangay Atok Trail is covered by Proclamation No. 414, series of 1957 (Proclamation 414), which declared the same as mineral reservation for Baguio City, for which reason he was unable to get a title over the subject property despite his possession thereof.<sup>14</sup>

Punong Barangay Stephen T. Aligo was also presented by petitioners as a witness. He testified that by Resolution No. 386, series of 1995, the City Council requested for the release of the vast area covered by Proclamation 414, for housing purposes to be awarded to the occupants of Barangay Atok Trail. Also, he narrated that in a census conducted in 2003, it was found that there were two hundred thirty (230) houses in Barangay Atok Trail and none of these houses had building permits.<sup>15</sup>

On the other hand, respondents' witnesses, Antonio O. Visperas, Robert Albas Awingan, and George Addawe, Jr., all testified that the structures of petitioners on the subject property were not covered by any building permit.<sup>16</sup> Additionally, Ernesto testified that the issue of possession over the said property was the subject of an appeal pending before the Office of the DENR Secretary.<sup>17</sup>

### **The RTC Ruling**

In a Decision<sup>18</sup> dated April 27, 2006, the RTC enjoined the City Government of Baguio and its agents from implementing DO No. 5 "until and after the resolution of all the cases/issues involving the subject property and/or area affected by the appropriate government agencies concerned." The injunction stemmed from its finding that Proclamation 414 declared the entire area of Barangay Atok Trail as a buffer zone for the mining industry, and, for that reason, all structures constructed thereon (and not only that of petitioners) were not covered by building permits. Thus, the RTC held that it would violate the equal protection clause if it would allow the demolition of petitioners' structures while leaving untouched the other structures in the area.<sup>19</sup>

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<sup>13</sup> Id. at 172.

<sup>14</sup> See id.

<sup>15</sup> Id. at 173.

<sup>16</sup> See id. at 174-175.

<sup>17</sup> Id. at 175.

<sup>18</sup> Id. at 167-179.

<sup>19</sup> Id. at 178.

Dissatisfied, respondents appealed<sup>20</sup> to the CA.

### The CA Ruling

In a Decision<sup>21</sup> dated June 29, 2012, the CA reversed the ruling of the RTC, finding that petitioners failed to show any right to be protected. It relied on the Decision<sup>22</sup> rendered on August 31, 2006 by then DENR Secretary Angelo Reyes in DENR Case No. 5625, which recognized and respected the ancestral and preferential rights of Mariano Pangloy and the Heirs of Juanito Lardizabal over the subject property pending the final determination by the NCIP of their ancestral claim.<sup>23</sup> Accordingly, the CA held that where the plaintiff – as petitioners in this case – failed to demonstrate that he has an existing right to be protected by injunction, the suit for injunction must be dismissed for lack of cause of action.<sup>24</sup>

Unperturbed, petitioners filed a motion for reconsideration, raising therein the Decision<sup>25</sup> of the NCIP Regional Hearing Office dated May 18, 2012, which ruled that between petitioners and Ernesto, the former have a better right to the issuance of ancestral land titles over the portions they are claiming to be their ancestral lands.<sup>26</sup> The CA, however, denied the motion in a Resolution<sup>27</sup> dated March 5, 2013, maintaining that petitioners have no right *in esse*. Thus, considering that petitioners have no building permit over the subject constructions, it ruled that the public respondents have the right to demolish the subject structures.<sup>28</sup>

Hence, this petition.

### The Issues Before the Court

The issues for resolution are: (a) whether the CA should have dismissed respondents' appeal as it involves pure questions of law and/or for lack of merit; and (b) whether the issuance of a writ of injunction is warranted.

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<sup>20</sup> Not attached to the *rollo*.

<sup>21</sup> *Rollo*, pp. 117-132.

<sup>22</sup> Entitled *Mariano Pangloy and Heirs of Juanito Lardizabal, rep. by Colonel Ernesto Lardizabal, Appellants v. Arthur Vercelles*.

<sup>23</sup> See portions of the DENR Decision dated August 31, 2006; *rollo*, pp. 123-129.

<sup>24</sup> *Id.* at 129; citing *Barayuga v. Adventist University of the Philippines*, G.R. No. 168008, August 17, 2011, 655 SCRA 640, 643.

<sup>25</sup> Not attached to the *rollo*.

<sup>26</sup> *Rollo*, p. 133.

<sup>27</sup> *Id.* at 133-134.

<sup>28</sup> *Id.* at 134.

## The Court's Ruling

The petition is meritorious.

### I.

On the preliminary procedural issue, Rule 41 of the Rules of Court (Rules) provides for three (3) ways by which an appeal from the RTC's decision may be undertaken, depending on the nature of the attendant circumstances of the case, namely: (a) an ordinary appeal to the CA in cases decided by the RTC in the exercise of its original jurisdiction; (b) a petition for review to the CA in cases decided by the RTC in the exercise of its appellate jurisdiction; and (c) a petition for review on *certiorari* directly filed with the Court where only questions of law are raised or involved.<sup>29</sup> The first mode of appeal under Rule 41 of the Rules is available on questions of fact or mixed questions of fact and of law. The second mode of appeal, governed by Rule 42 of the Rules, is brought to the CA on questions of fact, of law, or mixed questions of fact and of law. The third mode of appeal under Rule 45 of the Rules is filed with the Court only on questions of law.<sup>30</sup>

There is a "question of law" when the doubt or difference arises as to what the law is on a certain state of facts, and which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a "question of fact" when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct, is a question of law.<sup>31</sup>

In this case, the CA was called upon, not to examine the probative value of the evidence presented, but to determine whether the legal conclusions made based on the recorded evidence is correct. Essentially, the issue raised before the CA was whether the order for the summary demolition of petitioners' structures authorized under the law, and in that relation, whether the RTC's grant of the complaint for injunction based on the equal protection clause was proper. Clearly, with none of the factual circumstances contested, the appeal involved pure questions of law that should have been brought directly to the Court. Consequently, on a technical note, the CA should have dismissed respondents' appeal for having been filed with the wrong tribunal pursuant to Section 2, Rule 50 of the Rules which reads:

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<sup>29</sup> *Far Eastern Surety and Insurance Co., Inc. v. People*, G.R. No. 170618, November 20, 2013, 710 SCRA 358, 364.

<sup>30</sup> *Id.* at 364-365.

<sup>31</sup> *Republic v. Medida*, G.R. No. 195097, August 13, 2012, 678 SCRA 317, 324.

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**SEC. 2. Dismissal of improper appeal to the Court of Appeals.** – An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court.

Be that as it may, a review of the substantive merits of this case would nevertheless warrant the grant of the present petition which seeks the reversal of the CA decision.

**II.**

DO No. 5<sup>32</sup> states on its face that it was issued in accordance with Section 3, paragraph 2.5 (a) of the Implementing Rules and Regulations (IRR) Governing Summary Eviction (Summary Eviction IRR), to wit:

**SECTION 3. Procedures and Guidelines**

x x x x

**2.0 Issuance of Summary Eviction Notice**

x x x x

**2.5 In the Issuance of notice, the following shall be strictly observed:**

- a. For on-going construction, no notice shall be served. Dismantling of the structures shall be immediately enforced by the LGU or the concerned agency to demolish.

To note, the Summary Eviction IRR was issued pursuant to Section 28, Article VII of RA 7279, which equally provides for the situations wherein eviction or demolition is allowed as crafted exceptions to the moratorium on eviction under Section 44, Article XII<sup>33</sup> of the same law.

Sec. 28. Eviction and Demolition. — Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

**(a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;**

**(b) When government infrastructure projects with available funding are about to be implemented; or**

<sup>32</sup> See id. at 9-11.

<sup>33</sup> Sec. 44. Moratorium on Eviction and Demolition. — There shall be a moratorium on the eviction of all program beneficiaries and on the demolition of their houses or dwelling units for a period of three (3) years from the effectivity of this Act: Provided, **That the moratorium shall not apply to those persons who have constructed their structures after the effectivity of this Act and for cases enumerated in Section 28 hereof.** (Emphasis supplied)

**(c) When there is a court order for eviction and demolition.**

X X X X

This Department of the Interior and Local Government and the Housing and Urban Development Coordinating Council **shall jointly promulgate the necessary rules and regulations to carry out the above provision.** (Emphases supplied)

Section 2 of the Summary Eviction IRR provides that only **new squatter**<sup>34</sup> families whose structures were built after the effectivity of RA 7279, otherwise known as the “Urban Development and Housing Act of 1992,” and squatter families identified by the local government unit (LGU) as professional squatters<sup>35</sup> or members of squatting syndicates shall be subject of summary eviction:

SECTION 2. **Coverage** – The following shall be subject for summary eviction:

- 1.0 **New squatter** families whose structures were built after the effectivity of RA 7279; and
- 2.0 Squatter families identified by the LGU in cooperation with the Presidential Commission of the Urban Poor (PCUP), Philippine National Police (PNP) and accredited Urban Poor [O]rganization (UPO) as **professional squatters or members of squatting syndicates** as defined in the Act.

Under the Summary Eviction IRR, the term “**summary eviction**” has been defined as “the immediate dismantling of new illegal structures by the local government units or government agency authorized to [demolish] in coordination with the affected urban poor organizations without providing the structure owner(s) any benefits of the Urban Development and Housing Program.”<sup>36</sup>

Meanwhile, the terms “new squatter,” “professional squatters,” and “squatting syndicates” have been respectively defined as follows:

“**New squatter**” refers to individual groups who occupy land without the express consent of the landowner after March 28, 1992. Their structures shall be dismantled and appropriate charges shall be filed against them by the proper authorities if they refuse to vacate the premises.<sup>37</sup>

“**Professional squatters**” refers to individuals or groups who occupy lands without the express consent of the landowner and who have sufficient income for legitimate housing. The term shall also apply to persons who have previously been awarded homelots or housing units by the Government but who sold, leased or transferred the same to settle illegally in the same place or in another urban area, and non-bona fide occupants and intruders of lands reserved for socialized

<sup>34</sup> See Sec. 1, par. 4.0 of the Summary Eviction IRR.

<sup>35</sup> See Sec. 3 (m), Article I of RA 7279 and Section 1, par. 2.0 of the Summary Eviction IRR.

<sup>36</sup> See Sec. 1, par. 1.0 of the Summary Eviction IRR.

<sup>37</sup> See Sec. 1, par. 4.0 of the Summary Eviction IRR.

housing. The term shall not apply to individuals or groups who simply rent land and housing from professional squatters or squatting syndicates.<sup>38</sup>

“Squatting syndicates” refers to groups of persons engaged in the business of squatter housing for profit or gain.<sup>39</sup>

In this case, petitioners cannot be considered as new squatters, since, although their structures were built after March 28, 1992, they or their predecessors-in-interest had occupied, and were claimants of the subject property long before the said date. Neither have they been identified by the LGU as professional squatters nor members of a squatting syndicate. Thus, since petitioners do not fall under the coverage of the said IRR, the issuance of DO No. 05 had no legal basis at the onset.

More significantly, none of the three (3) situations enumerated under Section 28, Article VII of RA 7279 as above-cited, when eviction or demolition is allowed, have been shown to be present in the case at bar. Specifically, it was not shown that the structures are in danger areas or public areas, such as a sidewalk, road, park, or playground; that a government infrastructure project is about to be implemented; and that there is a court order for demolition or eviction. Therefore, the issuance by the City Mayor of an order for the summary demolition of petitioners’ structures finds no basis in the said law permitting summary demolition or eviction.

While respondents make much ado of petitioners’ lack of building permits, it should be underscored that under Presidential Decree No. 1096,<sup>40</sup> otherwise known as the “National Building Code of the Philippines” (NBCP), the mere fact that a structure is constructed without a building permit, as well as non-compliance with work stoppage order, without more, will not call for a summary demolition, but subjects the violator to an administrative fine under Section 212,<sup>41</sup> Chapter II of the NBCP, or a criminal case under Section 213<sup>42</sup> of the same law.

<sup>38</sup> See Sec. 3 (m), Article I, RA 7279, and Sec.1, par. 2.0 of the Summary Eviction IRR.

<sup>39</sup> See Sec. 3 (s), Article I, RA 7279.

<sup>40</sup> Entitled “ADOPTING A NATIONAL BUILDING CODE OF THE PHILIPPINES (NBCP) THEREBY REVISING REPUBLIC ACT NUMBERED SIXTY-FIVE HUNDRED FORTY-ONE (R.A. NO. 6541)” (approved February 19, 1977).

<sup>41</sup> **Section 212. Administrative Fines.**

For the violation of any of the provisions of this Code or any of the rules or regulations issued thereunder the Secretary is hereby empowered to prescribe and impose fines not exceeding ten thousand pesos.

<sup>42</sup> **Section 213. Penal Provisions.**

It shall be unlawful for any person, firm or corporation, to erect, construct, enlarge, alter, repair, move, improve, remove, convert, demolish, equip, use, occupy, or maintain any building or structure or cause the same to be done contrary to or in violation of any provision of this Code.

Any person, firm or corporation who shall violate any of the provisions of this Code and/or commit any act hereby declared to be unlawful shall upon conviction, be punished by a fine of not more than twenty thousand pesos or by imprisonment of not more than two years or by both such fine and imprisonment: Provided, that in the case of a corporation firm, partnership or association, the penalty shall be imposed upon its officials responsible for such violation and in case the guilty party is an alien, he shall immediately be deported after payment of the fine and/or service of his sentence.

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Indeed, while Section 301, Chapter III of the NBCP states that “[n]o 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,” the remedy of summary abatement against the bare absence of a building permit was not provided for.

Meanwhile, Section 215 of the NBCP, and its corresponding IRR provision (both of which are respectively quoted hereunder) states that before a structure may be abated or demolished, there must first be a finding or declaration by the Building Official that the building/structure is a nuisance, ruinous or dangerous:

**Section 215. Abatement of Dangerous Buildings.**

When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the degree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines.

**PROCEDURE FOR ABATEMENT/ DEMOLITION OF DANGEROUS/ RUINOUS BUILDINGS/ STRUCTURES**

**5. Procedure for Demolition of Buildings**

The following steps shall be observed in the abatement/demolition of buildings under this Rule:

5.1 There must be a finding or declaration by the Building Official that the building/structure is a nuisance, ruinous or dangerous.

5.2 Written notice or advice shall be served upon the owner and occupant/s of such finding or declaration, giving him at least fifteen (15) days within which to vacate or cause to be vacated, repaired, renovated, demolished and removed as the case may be, the nuisance, ruinous or dangerous building/structure or any part or portion thereof.

5.3 Within the fifteen-day (15) period, the owner may, if he so desires, appeal to the Secretary the finding or declaration of the Building Official and ask that a re-inspection or re-investigation of the building/structure be made.

x x x<sup>43</sup>

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<sup>43</sup> As provided by the Implementing Rules and Regulations promulgated by the then Ministry of Public Works to implement P.D. No. 1096, under the title Abatement/Demolition of Buildings (see portions thereof as cited in the case of *Chua Huat v. CA*, 276 Phil. 1 (1991), which was further amended in the 2004 Revised IRR of P.D. No. 1096 (as published by the Department of Public Works and Highways on April 1, 8 and 15, 2005).

To this, it bears noting that it is the Building Official, and not the City Mayor, who has the authority to order the demolition of the structures under the NBCP. As held in *Gancayco v. City Government of Quezon City*:<sup>44</sup>

[T]he Building Code clearly provides the process by which a building may be demolished. **The authority to order the demolition of any structure lies with the Building Official.** The pertinent provisions of the Building Code provide:

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 [to] 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.

[x x x x]

SECTION 207. Duties of a Building Official. — In his respective territorial jurisdiction, the **Building Official** shall be primarily responsible for the enforcement of the provisions of this Code as well as of the implementing rules and regulations issued therefor. He is the official charged with the duties of issuing building permits.

In the performance of his duties, a Building Official may enter any building or its premises at all reasonable times to inspect and determine compliance with the requirements of this Code, and the terms and conditions provided for in the building permit as issued.

When any building work is found to be contrary to the provisions of this Code, the Building Official may order the work stopped and prescribe the terms and/or conditions when the work will be allowed to resume. Likewise, the Building Official is authorized to order the discontinuance of the occupancy or use of any building or structure or portion thereof found to be occupied or used contrary to the provisions of this Code.

x x x x (Emphases supplied)

In this case, none of the foregoing requisites were shown to concur. Plainly, records are bereft of any declaration coming from the Building Official, and it is undisputed that the demolition order was issued by the City Mayor. Notably, while respondents invoke the City Mayor's authority under Section 455 (b) 3 (vi)<sup>45</sup> of the Local Government Code<sup>46</sup> to order the

<sup>44</sup> See *Gancayco v. City Government of Quezon City*, 674 Phil. 637, 656-657 (2011).

<sup>45</sup> Section 455. Chief Executive; Powers, Duties and Compensation.

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demolition or removal of an illegally constructed house, building, or structure within the period prescribed by law or ordinance and their allegation that respondents' structures were constructed without building permits, records disclose that the same was not raised before the trial court. Since respondents invoked the said section for the first time in their comment to the instant petition,<sup>47</sup> the argumentation cannot thus be entertained, it being settled that matters, theories or arguments not brought out in the proceedings below will ordinarily not be considered by a reviewing court as they cannot be raised for the first time on appeal.<sup>48</sup>

Besides, it is clear that DO No. 05 was not issued pursuant to Section 455 (b) 3 (vi) of the Local Government Code, but pursuant to "Section 3 par. 2.5 (a) of the implementing rules and regulations governing summary eviction jointly issued by the Department of Interior and Local Government (DILG) and the Housing and Urban Development Coordinating Council x x x,"<sup>49</sup> implementing Section 28, Article VII of RA 7279, the application of which, however, has been herein debunked.

In fine, DO No. 05, which ordered the summary demolition of petitioners' structures, has no legal moorings and perforce was invalidly issued. Accordingly, an injunctive writ to enjoin its implementation is in order. It is well-settled that for an injunction to issue, two requisites must concur: first, there must be a right to be protected; and second, the acts against which the injunction is to be directed are violative of said right.<sup>50</sup> Here, the two (2) requisites are present: there is a right to be protected – that is, petitioners' right over their structures which should be preserved unless their removal is warranted by law; and the act, *i.e.*, the summary demolition of the structures under DO No. 05, against which the injunction is directed, would violate said right.<sup>51</sup>

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- (b) For efficient, effective and economical governance the purpose of which is the general welfare of the city and its inhabitants pursuant to Section 16 of this Code, the city mayor shall:

x x x x

- (3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and countryside growth and progress and, relative thereto, shall:

x x x x

- (vi) Require owners of illegally constructed houses, buildings or other structures to obtain the necessary permit, subject to such fines and penalties as may be imposed by law or ordinance, or to make necessary changes in the construction of the same when said construction violates any law or ordinance, or to order the demolition or removal of said house, building or structure within the period prescribed by law or ordinance;

<sup>46</sup> RA 7160 entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991" (approved on October 10, 1991).

<sup>47</sup> *Rollo*, p. 146.

<sup>48</sup> *The City of Baguio v. Niño*, 521 Phil. 354, 363 (2006).

<sup>49</sup> *Rollo*, pp. 9-10.

<sup>50</sup> See *Perez v. Madrona*, G.R. No. 184478, March 21, 2012, 668 SCRA 696, 706.

<sup>51</sup> *Id.*


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As a final note, the Court exhorts that absent compliance with the laws allowing for summary eviction, respondents cannot resort to the procedural shortcut of ousting petitioners by the simple expedient of a summary demolition order from the Office of the City Mayor. They have to undergo the appropriate proceeding as set out in the NBCP and its IRR or avail of the proper judicial process to recover the subject property from petitioners. In pursuing said recourse, it would also not be amiss for the parties to await the final resolution of any pending case involving the subject property between petitioners and Ernesto, before the appropriate government agencies, in order to avoid any further complication on the matter.


That being said, it is then unnecessary to delve into the other ancillary issues raised in these proceedings.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated June 29, 2012 and the Resolution dated March 5, 2013 of the Court of Appeals in CA-G.R. CV No. 87439 are hereby **REVERSED** and **SET ASIDE**. The implementation of Demolition Order No. 05, series of 2005 is **ENJOINED**.

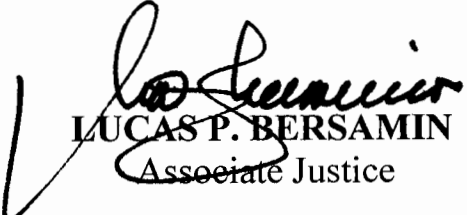
**SO ORDERED.**


  
**ESTELA M. HERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.

**MARIA LOURDES P. A. SERENO**

Chief Justice