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Republic of the Philippines
Supreme Court
Manila

Misael D C Batt
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Division Clerk of Court
Third Division

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE 2020

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THIRD DIVISION

REYNALDO DELA CRUZ and
CATALINO C. FELIPE,
Petitioners,

G.R. No. 192692

Present:

- versus -

LEONEN, J.,
Chairperson,
GESMUNDO,
CARANDANG,
ZALAMEDA, and
GAERLAN, JJ.

LEOPOLDO V. PARUMOG,
GUARDIAN ANGEL ETERNAL
GARDEN, and MUNICIPALITY
OF GUIMBA, NUEVA ECIJA,
represented by HON. POCHOLO
M. DIZON,
Respondents.

Promulgated:
June 17, 2020

Misael D C Batt

X-----X

DECISION

GAERLAN, J.:

The Case

This is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court against the February 26, 2010 Decision¹ and the June 25, 2010 Resolution² of the Court of Appeals (CA) in CA-G.R. CV No. 88238, which reversed the Decision of the Regional Trial Court (RTC) Branch 31 of Guimba, Nueva Ecija, in a case for injunction.

Antecedents

Respondent Leopoldo V. Parumog (Parumog) sought to build the Guardian Angel Eternal Garden memorial park on a parcel of land owned by him and located at Barangay Cavite, Guimba, Nueva Ecija. To implement his proposal, Parumog sought the required permits and clearances from

¹ *Rollo*, pp. 179-193; penned by Associate Justice Fernanda Lampas-Peralta with the concurrence of Associate Justices Marlene Gonzales-Sison and Florito S. Macalino.

² *Id.* at 253.

respondent Municipality of Guimba Local Government Unit (Guimba LGU) and the local government unit of Barangay Cavite (Barangay LGU).³

However, Parumog's proposal was opposed by the owners of the lots adjoining the proposed memorial park site, including petitioners Reynaldo dela Cruz and Catalino C. Felipe, who filed a complaint for injunction with prayer for temporary restraining order (TRO), dated June 15, 2004,⁴ seeking to stop the construction of the memorial park. Alongside Parumog, the Guimba LGU was also impleaded as a defendant for allowing the project through its Resolution No. 33-04, despite the alleged violations of petitioners' rights to health and a balanced ecology. The complaint was docketed as Civil Case No. 1332-G and raffled off to Branch 31 of the RTC of Guimba. On June 25, 2004, the trial court granted petitioners' prayer for a TRO.⁵

Parumog and the Guimba LGU answered that Resolution No. 33-04 was approved and issued only after the former had complied with all the requirements for the establishment of a memorial park under the pertinent regulations. Furthermore, the project was approved by the Sangguniang Barangay of Cavite, Guimba, through its Kapasyahan Blg. 02-2004. It was likewise approved by a majority of the adjoining residents⁶ – petitioners included – during a consultation with personnel from the Environmental Management Bureau (EMB) of the Department of Environment and Natural Resources (DENR), as shown by their signatures in a manifesto entitled “Pag-endorso at Aming Suporta sa Binabalak ni G. Leopoldo V. Parumog na Gawing Memorial Park ang Kanyang Lote sa Barangay Cavite, Guimba, Nueva Ecija.”⁷ They likewise maintained that petitioners' fears of environmental pollution to be caused by the memorial park were unfounded since the park would observe the proper procedures and standards for ground burials. Parumog and the Guimba LGU further prayed for the lifting of the temporary restraining order and the dismissal of the complaint, as well as an award of exemplary damages, attorney's fees, and litigation expenses.

After due hearing and consideration of the parties' pleadings on the application for writ of preliminary injunction, the trial court found “serious legal flaws in the legality of Sangguniang Bayan Resolution No. 33-04.” It therefore issued an Order, dated July 21, 2004, granting the application. Respondents filed a motion for reconsideration which was denied in an Order, dated November 5, 2004.⁸ Pre-trial was then conducted, where the parties agreed on “the existence of TCT No. NT-3373 in the name of the defendant

³ Id. at 180.

⁴ Id. at 180-181.

⁵ Id.

⁶ Id. at 181-182.

⁷ Id.

⁸ Id. at 183.

Leopoldo V. Parumog which covers the property in question.”⁹ The case then proceeded to trial on the merits.

The Ruling of the Trial Court

In a Decision dated September 29, 2006,¹⁰ the trial court ruled in favor of Dela Cruz, making the injunction against the construction of the memorial park permanent.

The trial court observed that Resolution No. 33-04 merely reclassified the proposed memorial park site into commercial land. It did not have the effect of designating the land as a burial ground. The trial court further noted that Barangay Cavite was not among the designated burial areas under the local zoning ordinance of Guimba; therefore, for the construction of Parumog’s proposed memorial park to proceed, the Sangguniang Bayan of Guimba had to amend its municipal zoning ordinance. Since Resolution No. 33-04 had no such effect, it cannot, by itself, be considered an approval of the proposed memorial park. Furthermore, a municipal board resolution cannot amend a municipal ordinance. Nevertheless, the defect was cured by the Sangguniang Bayan’s passage on October 25, 2004, of Ordinance No. 4-04, which introduced the necessary amendments to the municipal zoning ordinance.

The trial court thus considered the issue of whether the enactment of said amendatory ordinance satisfied the requirements set by the municipal zoning ordinance, i.e., whether the amendment was subjected to public hearing and was approved by either the Housing and Land Use Regulatory Board (HLURB) or the Sangguniang Panlalawigan (SP) of Nueva Ecija.¹¹ The court found that while there was sufficient evidence that public hearings were conducted, there was no proof that the amendatory ordinance was approved by the HLURB or the SP of Nueva Ecija. There being no proper amendment of the municipal zoning ordinance to include Barangay Cavite as a burial ground area, the injunction against Parumog’s memorial park project was maintained by the trial court.¹²

The Ruling of the CA

Acting on the appeal filed by Parumog and the Guimba LGU, the CA reversed the trial court’s decision and dismissed the complaint for injunction.

⁹ Id. at 184.

¹⁰ Penned by Presiding Judge Napoleon R. Sta. Romana. Id at 295-314.

¹¹ Id. at 311.

¹² Id.

Reducing the arguments raised by the appeal to the main issue of whether Ordinance No. 4-04 was approved by the HLURB or the SP of Nueva Ecija, the appellate court found that Parumog and the Guimba LGU were able to submit a copy of Kapasyahan Blg. 181-S-2004 issued by the SP of Nueva Ecija, which categorically states that the provincial legislature approved the act of the Guimba municipal board. The said Kapasyahan reads:

TANGGAPAN NG SANGGUNIANG PANLALAWIGAN

KIMIS NG KATITIKAN NG IKA-21
PANGKARANIWANG PULONG NG SANGGUNIANG
PANLALAWIGAN NA GINANAP SA
PANLALAWIGANG BULWAGANG PULUNGAN,
PANLALAWIGANG KAPITOLYO, LUNGSOD NG
PALAYAN NUONG

DISYEMBRE 06, 2004

x x x

x x x

x x x

KAPASIYAHAN BLG. 181-S-2004

SAPAGKAT, sa ilalim ng Kodigo ng Lokal na Pamahalaan ng 1991, Kabanata 3 Pangkat 56, ay itinatadhana ang kapangyarihan ng Sangguniang [sic] Panlalawigan upang siyasatin at pag-aralan kung naaayon at napapaloob sa kapangyarihan ng mga Sangguniang Bayan/Lungsod na kanilang nasasakupan, ang mga pinagtibay na Kapasiyahan o Kautusan,

SAPAGKAT, batay sa masusing pag-aaral ng Lupon sa Kapasiyahan at Kautusan, ang mga sumusunod na Kapasiyahan at Kautusan ay naaayon at napapaloob sa mga alituntuning itinatakda ng batas:

DAHIL DITO, sa mungkahi ng Kgg. Na Kagawad Allan A. Gamilla, na pinangalawahan ng Kgg. Na Kagawad Rudy J. de Leon, napagpasiyahan ng Kapulungan ng [sic] PAGTIBAYIN at ideklarang napapaloob sa kapangyarihang taglay ng Sangguniang Bayan/Panlungsod ang mga sumusunod na kapasiyahan:

Kap. Blg. 83-s-2004 (Ord. No. 04-s-2004), na may petsa Oktubre 25, 2004, na pinagtibay ng Sangguniang Bayan ng Guim[b]a, Nueva Ecija.¹³

Given this explicit approval by the SP, the appellate court held that *“there is no basis for the trial court to rule that ‘the said amendment (referring to SB Ordinance No. 4-04 dated October 25, 2004) is not yet effected because of non compliance [sic] with the requirement of the law for the*

¹³ Id. at 27-28, 114-115.

approval/authentication of the same by the HLURB or the Sangguniang Panlalawigan of Nueva Ecija.”¹⁴

The CA also held that Dela Cruz and Felipe have been precluded from claiming that they were not consulted before Resolution No. 33-04 converting Parumog’s property for commercial purposes was passed, for they did not appeal from the RTC decision, and hence could not be made to benefit from the appeal filed by Parumog and the Guimba LGU.

The Issues

Dela Cruz and Felipe moved for reconsideration, which the CA denied in the assailed June 25, 2010 resolution; hence, this petition, which raises the following issues: 1) Whether or not the CA erred in barring Dela Cruz and Felipe from raising the issue of non-consultation on the ground that they cannot be benefited by the appeal filed by Parumog and the Guimba LGU; 2) Whether or not the CA erred in reversing the trial court ruling on the ground of the validity and due approval of Resolution No. 33-04 and Ordinance No. 4-04; and 3) Whether or not the rights of the adjoining lot owners to health, a healthful and balanced ecology, and due process were violated.¹⁵

The Ruling of the Court

In an action for injunction, the plaintiff has to show that there is a right *in esse* that must be protected; and the act against which the injunction is directed to constitutes a violation of such right.¹⁶ Furthermore, injunctive writs cannot be granted at the slightest sign of an alleged injury. In the antiquated but still leading case of *North Negros Sugar Co. v. Hidalgo*,¹⁷ we said that:

... An injunction will not be granted when good conscience does not require it, where it will operate oppressively or contrary to justice, where it is not reasonable and equitable under the circumstances of the case, or where it will tend to promote, rather than to prevent, fraud and injustice. . . .” “. . . a court of equity may interfere by injunction to restrain a party from enforcing a legal right against all equity and conscience. . . .” “. . . The comparative convenience or inconvenience of the parties from granting or withholding the injunction sought should be considered, and none should be granted if it would operate oppressively or inequitably, or contrary to the real justice of the case. This doctrine is well established.”

¹⁴ Id. at 115.

¹⁵ Id. at 116-117.

¹⁶ *City of Lapu-Lapu v. Phil. Economic Zone Authority*, 748 Phil. 473 (2014).

¹⁷ 63 Phil. 664 (1936).

“The power of the courts to issue injunctions should be exercised with great caution and only where the reason and necessity therefor are clearly established; and while this rule has been applied more frequently in the case of preliminary and mandatory injunctions, it applies to injunctions of all classes, and to restraining orders. . . .” (citations omitted)

“The writ of injunction will not be awarded in doubtful or new cases not coming within well-established principles of equity.”¹⁸

x x x x

[I]njunction, being an equitable remedy, the granting thereof is dependent upon the sound discretion of the court. It is only in clear cases of abuse of discretion on the part of the trial judge that review on appeal would be made. “There is no power the exercise of which is more delicate, which requires greater caution, deliberation, and sound discretion, or more dangerous in a doubtful case, than the issuing an injunction; it is the strong arm of equity, that never ought of law cannot afford an adequate or commensurate remedy in damages. The right must be clear, the injury impending or threatened, so as to be averted only by the protecting preventing process of injunction.”¹⁹

Jurisprudence has laid down four essential requisites for the issuance of an injunctive writ: (1) That the petitioner applicant must have a clear and unmistakable right; (2) That there is a material and substantial invasion of such right; (3) That there is an urgent and permanent necessity for the writ to prevent serious damage; and (4) No other ordinary, speedy, and adequate remedy exists to prevent the infliction of irreparable injury.²⁰

In the case at bar, the appellate court found that the trial court abused its discretion in issuing a permanent injunction against the memorial park project after finding that the Guimba LGU had passed a valid amendment to its zoning ordinance which paved the way for the construction of memorial parks in the territory of Barangay Cavite. Ordinance No. 4-04 provides:

SB ORDINANCE NO. 4-04
October 25, 2004

BE IT ORDAINED BY THE SANGGUNIANG BAYAN OF GUIMBA,
NUEVA ECIJA, IN SESSION ASSEMBLED.

Section 1. Title and Authority. This ordinance shall be cited as the amendatory ordinance on the proposed location of new cemeteries in Guimba, Nueva Ecija, and is enacted pursuant to the provision of Section

¹⁸ Id. at 678.

¹⁹ Id. at 788.

²⁰ *Bicol Medical Center v. Botor*, 819 Phil. 447 (2017), citing *St. James College of Parañaque v. Equitable PCI Bank*, 641 Phil. 452, 466 (2010), *Biñan Steel Corporation v. Court of Appeals*, 439 Phil. 688, 703-704 (2002) and *Hutchison Ports Philippines Ltd. v. Subic Bay Metropolitan Authority*, 393 Phil. 843, 859 (2000).

46 (Amendments to the Zoning Ordinance) of Municipal Ordinance No. 15, series of 2000, otherwise known as the Local Zoning Ordinance of Guimba, Nueva Ecija.

Section 2. Proposed site of new cemetery Barangay Cavite, being within the urban area zone classification, is hereby included as proposed location of new cemeteries in Guimba, Nueva Ecija in the Development Master Plan of Guimba, Nueva Ecija (2001-2005).

Section 3. Repealing Clause. All ordinances, rules, regulations and promulgations in conflict with the provisions of this resolution are hereby repealed, reversed, amended or modified accordingly.

Section 4. Effectivity. This ordinance shall take effect upon approval by the [H]LURB or the Sangguniang Panlalawigan of Nueva Ecija.²¹

It is clear from the quoted passage that all the ordinance does is to allow new cemeteries to be built in Barangay Cavite. There is nothing in the ordinance amounting to an approval or clearance of Parumog's proposed memorial park project, which must still comply with the applicable regulations, specifically HLURB Resolution No. 681-00, or the Amended Rules and Regulations for Memorial Parks/Cemeteries. Section 2 of said HLURB Resolution sets out the process and documentary requirements for the approval of a memorial park or cemetery project, *viz.* :

SECTION 2. Application for Approval of Memorial Park/Cemetery Plan.
— Every registered owner or developer of a parcel of land who wishes to convert the same into a memorial park/cemetery shall apply with the Board or city/municipality concerned for the approval of the memorial park/cemetery plan by filing the following:

I. Approval of the Preliminary Development Plan

For all projects located in cities or municipalities with or without a Land Use Plan and/or Zoning Ordinance, a preliminary approval shall be required. Copies of the following shall be submitted in duplicate to the city/municipality concerned.

A. Site Development Plan/Scheme to be approved should be accessible to Persons With Disabilities (PWDs) in accordance with BP 344 otherwise known as the Accessibility Law and the Magna Carta for disabled persons (RA 7277) reflecting therein the layout of streets, pathways, plots, parking areas, support facilities, signages and other features in relation to existing site condition using a scale ranging from 1:200 to 1:2,000 duly signed and sealed by a licensed environmental planner.

B. 2 sets of the following documents duly signed and sealed by a licensed geodetic engineer:

²¹ *Rollo*, pp. 191-192.

1. Vicinity map/location map at a scale of 1:10,000 with a radius of 500 meters from the project site indicating existing utilities such as main traffic arteries, drainage system and outfall, etc. and community facilities like church, school and housing areas among others.

2. Topographic Plan to include existing conditions as follows:

a. Property boundary lines, bearing and distances;

b. Streets and easements, right-of-way width and elevation on and adjacent to the project;

c. Ground elevation/contour of the site; for ground that slopes less than 2%, indicate spot elevations at all breaks in grade, along all drainage channels and at selected points not more than 30 meters apart in all directions; for ground that slopes more than 2%, indicate contours with an interval of not more than 0.5 meter for more detailed preparation of plans and construction drawings.

d. Other conditions on the land: water courses, marshes, rock outcrops, wooded areas, isolated preservable trees 0.30 meters or more in diameter, houses and other significant features;

e. Proposed public improvements: highways or other major improvements planned by public authorities for future construction on or near the project.

C. Zoning Certification issued by HLURB or city/municipality concerned.

D. Certified true copy of Environmental Compliance Certificate (ECC) or Certificate of Non-Coverage (CNC) duly issued by the Department of Environmental and Natural Resources (DENR).

E. Certified true copy of conversion order or exemption clearance from the Department of Agrarian Reform (DAR).

F. Certified true copy of Title and Survey Plan.

Approval of the preliminary memorial park/cemetery plan shall be valid only for a period of 180 days from date of approval. A revalidation can be availed of only once after said period.

II. Approval of Final Memorial Park/Cemetery Plan

After the preliminary approval of the Memorial Park/Cemetery the owner or developer shall proceed with the preparation and submission to the city/municipality concerned in duplicate the following:

A. Final Memorial Park/Cemetery Plan consisting of the site development plan at any of the following scales: 1:200 or 1:1,000 or any scale not exceeding 1:2,000 indicating the following duly signed and sealed by a licensed environmental planner:

1. Lay-out of roads right-of-way width and gradient, easements and similar data for alleys, if any;

2. Plot boundaries, numbers, total land area and block numbers; (verified survey returns of mother title, sections and blocks including number of lots per block in each section and technical descriptions of road lots, open spaces, facilities, and blocks).

3. Site data, total land area, number of saleable plots, typical plot size, areas allocated for roads and pathways, and other facilities amenities.

B. Engineering plans duly signed and sealed by a licensed civil engineer passed on applicable Engineering Code and Design Criteria in accordance with the following:

1. Profile derived from existing topographic map duly signed and sealed by a geodetic engineer showing the vertical control, designed grade, curb elements and all information needed for construction.

2. Typical roadway sections showing relative dimensions and sloped of pavements, gutters, sidewalks, shoulders, benching and others.

3. Details of roadway showing the required thickness of pavement, sub-grade treatment and sub-base on the design analysis.

C. Storm drainage duly signed and sealed by a licensed sanitary engineer of civil engineer.

1. Profile showing the hydraulic gradients and properties of the main lines including structures in relation with the road grade line.

2. Details of drainage and miscellaneous structures such as various types of manholes, catch basins, inlets (curb, gutter and drop), culverts and channel lining.

D. Centralized or combined from storm and sewer system duly signed and sealed by licensed sanitary engineer.

E. Site grading plan duly signed and sealed by a licensed civil engineer.

Plans with the finished contour lines superimposed on the existing ground the limits of earthwork embankment slope, cut slopes, surface drainage, drainage outfalls and others.

F. Electrical plan and specifications duly signed and sealed by a licensed professional electrical engineer and duly approved by the city/municipal electrical engineer.

G. Landscaping plan indicating plant/tree species and other natural/man-made landscaping features e.g. lagoon, garden, benches, etc. duly signed and sealed by a licensed landscape architect.

H. Summary of Project Study indicating market, source/s of fund, statement of income, cash flow and work program.

I. Certified True Copy of Title or other evidence of ownership or intent to sell and authority to develop signed by the owner, Tax Declaration and current real estate tax receipt.

J. Clearances/Permits/Certifications from other agencies applicable to the Project:

1. Clearances/Permits from National Water Resources Board (NWRB)

a. Clearance stating that the memorial park/cemetery is not located on ground where the water table is not higher than 4.50 meters below the ground surface.

b. Water permit whenever a well within the project site shall be dug.

c. Permit to operate the wall.

2. Certified True Copy of Conversion Order or Exemption Clearance from the Department of Agrarian Reform (DAR) authorizing a change in use from agricultural to non-agricultural, where applicable.

3. Permit from the Department of Public Works and Highways (DPWH) when necessary e.g. when opening an access to a controlled traffic artery.

4. Initial and operational clearances from the Department of Health.

5. Certified True Copy of Environmental Compliance Certificate (ECC) or Certificate of Non-Coverage (CNC) duly issued by the Department of Environment and Natural Resources (DENR).

K. Joint affidavit of owner/developer and licensed environmental planner that the memorial park/cemetery plan conforms to the standards and requirements of these rules and that development thereof shall be made in accordance with the program submitted to the Board or city/municipality concerned.

L. List of names of duly licensed professional who signed the plans and other similar documents in connection with application filed with HLURB or city/municipality concerned indicating the following information:

1. Surname;

2. First Name;

3. Middle Name;

4. In case of married women professional also their maiden name; and

5. Professional license number, date of issue and expiration of its validity;

6. Professional tax receipt and date of issue.

If the application for the project is physically feasible and the plan complies with the zoning ordinance of the city or municipality where it is situated and with these rules, the project shall be issued a development permit issued by the Board or city/municipality concerned upon payment of the prescribed processing fee and under such conditions as may be imposed by the Board or city/municipality concerned upon payment of the prescribed processing fee and under such conditions as may be imposed by the Board or city/municipality concerned. A final approval/development permit shall be valid for a period of 2 years from date of issue, however, if physical development such as clearing and grubbing, road excavation, filling and compaction, etc. is not commenced within said period, the grantee of the permit may apply for its revalidation within the next succeeding year.

If development permit expires, no development shall be allowed unless a new application for approval is filed.

While Parumog did obtain a Locational Clearance from the Guimba LGU,²² there is no indication in the record that Parumog has complied with all the other requirements set by HLURB Resolution No. 681-00. During trial, Parumog submitted the following exhibits:

x x x Exhibit "1", Kapasiyahan Blg. 02-2004; Exhibit "1-A", 2nd page; Exhibit "2", Minutes, Public Hearing; Exhibit "2-A", Signatures; Exhibit "3", Certification of DTI; Exhibit "4", Certification of Brgy. Captain of Brgy. Cavite; Exhibit "4-A", Signature of Brgy. Captain; Exhibit "5", Certification of Municipal Health Officer; Exhibit "5-A", Signature; Exhibit "6" Certification of HLURB; Exhibit "6-A", Signature; Exhibit "7", Development Permit; Exhibit "7-A", Signature of Editha U. Barrameda; Exhibit "8" - Certificate Registration; Exhibit "8-A", Signature of Editha U. Barrameda; Exhibit "9", License to Sell; Exhibit "9-A", Signature; Exhibit "10", Environment Bureau Certification Indorsement; Exhibit "11", Environmental Compliance Certificate; Exhibit "11-A", Page 2; Exhibit "12", "12-A", "12-B" and "12-C", Affidavit of Signature of residents of Brgy. Cavite (public consultation); Exhibit "13", "13-A", "13-C", "13-D" and "13-E", Finding of DENR, Mines and Geo Science Bureau; Exhibit "14", Certification of Municipal Engineer; Exhibit "14-A", Signature of Municipal Engineer Jose Mateo[.]

x x x x

Exhibit "20" – the Kapasyahan Blg. 181, s-2004 by the Sangguniang Panlalawigan ng Nueva Ecija which affirms in toto Kapasyahan Big. 02-2004 of the Sangguniang Barangay of Brgy. Cavite, Guimba, Nueva Ecija by way of re-adopting the same in the Sangguniang Bayan Kapasyahan Big. 33-04;

²² Id. at 25-26.

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Exhibit "20-A" – the Certification affirming the validity of said Resolution by the Sangguniang Panlalawigan of Nueva Ecija duly signed by the Kalihim ng Sangguniang Panlalawigan Atty. Tomas F. Lahom III;

Exhibit "21" – the Local Environmental Clearance Certificate (LECC) from the office of the governor granting certification to the defendant to pursue his proposal Memorial Park Project of the Guardian Angel Eternal Garden to be operated by Engr. Leopoldo V. Parumog dated November 15, 2004 and duly signed by Hon. Tomas N. Joson III, Governor of Nueva Ecija;

Exhibit "22" and "22-A" – the Sangguniang Bayan Resolution No. 83-4 dated October 25, 2004 consisting of two (2) pages which grants to Engr. Leopoldo V. Parumog the prosecution of the project known as Guardian Angel Eternal Garden on the basis of the Resolution of Local Zoning Revenue Committee (LZRC) as additional proposed location of new cemeteries as identified in the development master plan of Guimba, Nueva Ecija;

Exhibit "23", "23-A" and "23-B" – the application for Land Use Conversion involving a parcel of land situated at Brgy. Cavite, Guimba, Nueva Ecija with an agricultural area of 2.2828 hectares and covered by TCT No. N-3372 by the proponent of the project Engr. Leopoldo V. Parumog address to the Department of Agrarian Reform, regional office at San Fernando, Pampanga which grants the conversion of the land in question from agricultural to commercial classification and that consequently defendant has been issued TCT No. N-3372 and consequently a Tax Declaration as incidental thereto which is referred herein and marked as Exhibit "24";

x x x x

x x x Exhibit "25" of the defendants, which is an Order issued by Lormelyn E. Claudio, Regional Director of the DENR, Environmental Management Bureau, addressed to Engr. Leopoldo V. Parumog, which states as follows:

On 27 February 2004, this Office received a complaint on the proposed memorial park project from Hon. Narciso Nario. An Investigation was conducted in response to the complaint on 09 March 2004. Findings revealed that you started development activities without an Environmental Compliance Certificate (ECC), which is in violation of Philippine Environment Impact Statement System.

A Notice of Violation (NOV) was issued to the developer on 30 March 2004. A series of meetings and public consultation was conducted to discuss and resolve the complaint.

After complying with requirements, an ECC was issued to the project on 1 June 2004.

However, a Temporary Restraining Order (TR) and a Preliminary Injunction was issued by Hon. Napoleon R. Sta. Romana to discontinue the construction and development of the memorial park known as the Guardian Angles [sic] Eternal Garden located at Brgy. Cavite, Guimba, Nueva Ecija.

As such, by virtue of the Writ of Preliminary Injunction issued 21 July 2004, the Environmental Compliance Certificate (ECC) with Reference Code No. 03NE 040305 140214A is hereby SUSPENDED until such time the complaint is resolved.

You are likewise enjoined to attend the Technical Conference on 05 Sep 2005 at EMB R3 Office 4/F Mel-Vi Bldg., Olongapo-Gapan Rd., City of San Fernando, Pampanga.

SO ORDERED. 15 Aug 2005.²³

The foregoing exhibits clearly show that Parumog is still in the process of obtaining all necessary regulatory approvals and submitting his memorial park project proposal to the Guimba LGU for *preliminary* approval. It should not be disputed that the Guimba LGU has the authority to make such approval, as this is clearly provided for not only in the aforementioned Section 2 of HLURB Resolution No. 681-00, but also in Section 447 of the Local Government Code, which vests the Guimba LGU, through its Sangguniang Bayan, with the following powers:

(2) (vii) Adopt a comprehensive land use plan for the municipality: Provided, That the formulation, adoption, or modification of said plan shall be in coordination with the approved provincial comprehensive land use plan;

(2) (viii) Reclassify land within the jurisdiction of the municipality, subject to the pertinent provisions of this Code;

(2) (vii) Adopt a comprehensive land use plan for the municipality: Provided, That the formulation, adoption, or modification of said plan shall be in coordination with the approved provincial comprehensive land use plan;

(2) (viii) Reclassify land within the jurisdiction of the municipality, subject to the pertinent provisions of this Code;

x x x x

(4) (ix) Regulate the establishment, operation, and maintenance of funeral parlors and the burial or cremation of the dead, subject to existing laws, rules and regulations.

²³ Id. at 304-306.

The Court now goes back to the requisites for an injunctive writ, viewed in the light of the facts established in the record and the allegations of the complaint. As for the first requisite, jurisprudence affirms the existence of the constitutional rights to health, healthful ecology, and due process, which are enforceable without need of legislation.²⁴ However, as for the second requisite, *i.e.*, the existence of a material and substantial invasion of such right, the complaint miserably fails. The records clearly show that the ultimate act complained of and sought to be enjoined by petitioners — the construction of the Guardian Angel Eternal Garden — has not happened yet.²⁵ It must be reiterated that neither Resolution No. 33-04 nor Ordinance No. 4-04 serves as a final approval of Parumog's proposal and there is nothing in the record to show that Parumog's proposal to build the Guardian Angel Eternal Garden has been given final clearance and approval by the Sangguniang Bayan of Guimba in accordance with HLURB Resolution No. 681-00. Without final approval from the Guimba LGU, Parumog's proposal cannot proceed; hence, there cannot be a material and substantial invasion of petitioners' rights, for the realization of the very act alleged to be an invasion of such rights remains contingent upon the submission of the final memorial park plan and the approval thereof by the Guimba LGU.

Furthermore, both courts *a quo* have found that petitioners actively participated in the public hearings conducted in the process of reclassifying Parumog's property as a commercial area. They have made their objections known to the Guimba LGU, which, nevertheless, went ahead and reclassified the area to allow the memorial park to be built.²⁶ Thus, We concur in the conclusion of both courts *a quo* that petitioners were not deprived of due process in the matter of the reclassification of Parumog's property.

Likewise, the fourth requisite, *i.e.*, the lack of another ordinary, speedy, and adequate remedy to prevent the infliction of irreparable injury has not been satisfied as well. At the risk of being repetitive, it must be reiterated that, under HLURB Resolution No. 681-00, Parumog must submit a preliminary development plan, which must be approved by the LGU. Once the preliminary development plan has been approved, Parumog must then submit a final memorial park plan which must likewise be approved by the LGU. There is no indication in the records that the Guimba LGU has already approved any preliminary development plan or final memorial park plan submitted by Parumog. Among the required components of a final memorial park plan are:

²⁴ On the right to health, see *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1 (2014). On the right to a healthful and balanced ecology, see *Oposa v. Factoran, Jr.*, G.R. No. 101083, July 30, 1993; *Republic v. Pagadian City Timber Co., Inc.*, 587 Phil. 42 (2008); and the Rules of Procedure for Environmental Cases (A.M. No. 09-6-8-SC, April 13, 2010). The existence and enforceability of the right to due process is too fundamental to require citation.

²⁵ *Rollo*, pp. 295-296.

²⁶ *Id.* at 311-314.

J. Clearances/Permits/Certifications from other agencies applicable to the Project:


1. Clearances/Permits from National Water Resources Board (NWRB)
 - a. Clearance stating that the memorial park/cemetery is not located on ground where the water table is not higher than 4.50 meters below the ground surface.
 - b. Water permit whenever a well within the project site shall be dug.
 - c. Permit to operate the well.
2. Certified True Copy of Conversion Order or Exemption Clearance from the Department of Agrarian Reform (DAR) authorizing a change in use from agricultural to non-agricultural, where applicable.
3. Permit from the Department of Public Works and Highways (DPWH) when necessary, e.g., when opening an access to a controlled traffic artery.
4. Initial and operational clearances from the Department of Health.
5. Certified True Copy of Environmental Compliance Certificate (ECC) or Certificate of Non-Coverage (CNC) duly issued by the Department of Environment and Natural Resources (DENR).

Clearly, petitioners may still air their health and ecological concerns over the project before the DENR, DAR or the DPWH, since Parumog still has to obtain permits from these agencies if his memorial park project is to proceed. While, it may be said that the petitioners' grievances have already been heard by the Gumba LGU, there is no showing that they have to completely exhausted their remedies with the pertinent agencies of national government. Verily, records show that Parumog has been summoned to appear before the DENR-EMB because of a complaint filed against him by Justice Narciso Nario. There is nothing preventing petitioners from airing similar complaints before the DENR-EMB or other concerned agencies enumerated in the HLURB Resolution No. 681-00.


All told, the CA did not err in dismissing the complaint for injunction, as petitioners have failed to prove that their circumstances warrant the grant of such an extraordinary remedy.

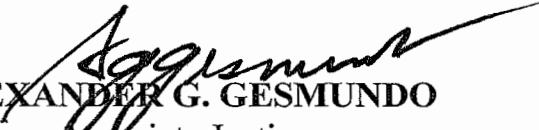
IN VIEW OF THE FOREGOING PREMISES, the present petition is hereby **DENIED**. The February 26, 2010 Decision and the June 25, 2010 Resolution of the Court of Appeals in CA-G.R. CV No. 88238 are hereby **AFFIRMED**.

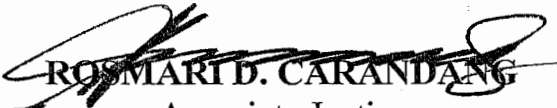
SO ORDERED.



SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson


ALEXANDER G. GESMUNDO
Associate Justice


ROSMARI D. CARANDANG
Associate Justice


RODIL N. ZALAMEDA
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, Third Division

CERTIFICATION

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



DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

MisDDBatt
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
Third Division
DEC 07 2020

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