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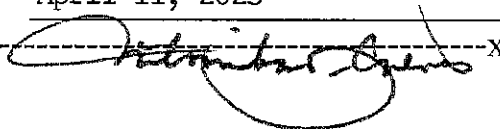
G.R. No. 211146 – SECRETARY PROCESO J. ALCALA, AS SECRETARY OF THE DEPARTMENT OF AGRICULTURE, AND AS CHAIRMAN OF THE NATIONAL FOOD AUTHORITY COUNCIL, AND THE BUREAU OF CUSTOMS, REPRESENTED BY COMMISSIONER JOHN PHILLIP P. SEVILLA, *petitioners, versus* HONORABLE JUDGE EMMANUEL C. CARPIO, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 16, REGIONAL TRIAL COURT IN DAVAO CITY, AND JOSEPH MANGUPAG NGO, *respondents*.

G.R. No. 211375 - SECRETARY PROCESO J. ALCALA, AS SECRETARY OF THE DEPARTMENT OF AGRICULTURE, AND AS CHAIRMAN OF THE NATIONAL FOOD AUTHORITY COUNCIL, AND THE BUREAU OF CUSTOMS, REPRESENTED BY COMMISSIONER JOHN PHILLIP P. SEVILLA, *petitioners, versus* HONORABLE JUDGE CICERO D. JURADO, JR., IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 11, REGIONAL TRIAL COURT IN MANILA, DANILO G. GALANG, DOING BUSINESS UNDER THE NAME AND STYLE ST. HILDEGARD GRAINS ENTERPRISES, AND IVY M. SOUZA, DOING BUSINESS UNDER THE NAME AND STYLE BOLD BIDDER MARKETING AND GENERAL MERCHANDISE, *respondents*.

Promulgated:

April 11, 2023

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CONCURRING OPINION

SINGH, J.:

In these consolidated cases, the petitioners Secretary Proceso J. Alcala, as Secretary of the Department of Agriculture (DA) and Chairperson of the National Food Authority (NFA), together with Bureau of Customs, represented by Commissioner John Phillip P. Sevilla (collectively, **the petitioners**) challenge:



1. the Order,¹ dated December 12, 2013, and the Order,² dated December 13, 2013, as well as the December 13, 2013 Writ of Preliminary Injunction³ issued by the public respondent Judge Emmanuel C. Carpio (**Judge Carpio**) of the Regional Trial Court, Branch 16, Davao City, in Civil Case No. 35,354-2013, in favor of private respondent Joseph M. Ngo (**Ngo**); and
2. the Order,⁴ dated January 23, 2014, the Order⁵ dated February 27, 2014, and the Amended Order,⁶ dated February 28, 2014, together with the January 24, 2014 Writ of Preliminary Injunction⁷ issued by the public respondent Judge Cicero D. Jurado, Jr. (**Judge Jurado**) of the Regional Trial Court, Branch, Manila, in Civil Case No. CV-14-131261, in favor of the private respondent Danilo G. Galang (**Galang**), owner of the sole proprietorship St. Hildegard Grains Enterprises, and the private respondent Ivy M. Souza (**Souza**), proprietor of the Bold Bidder Marketing and General Merchandise.

In the *ponencia*, the Court granted the separate Petitions for *Certiorari*⁸ of the petitioners and nullified the assailed Orders.⁹ The Court found that none of the private respondents Ngo, Galang, and Souza (collectively, **the private respondents**) had any right in *esse* to import goods.¹⁰ There being no clear and unmistakable right to protect via the relief of injunction, the complaint for injunction of the private respondents cannot prosper.¹¹ The Court also ruled that the private respondents do not stand to suffer any irreparable injury, as contemplated by the Rules of Court.¹² As such, the assailed Orders of both Judge Carpio and Judge Jurado were null and void for having been issued with grave abuse of discretion.¹³

I concur.

For preliminary injunctive relief to issue, the Court must find the concurrence of the following requisites: (1) the applicant must have a clear and unmistakable right to be protected, that is a right in *esse*; (2) there is a

¹ *Rollo* (G.R. No. 211146), Vol. I, pp. 78-84.

² *Id.* at 85.

³ *Id.* at 86-87.

⁴ *Rollo* (G.R. No. 211375), Vol. I, pp. 83-85.

⁵ *Id.* at 86-88.

⁶ *Id.* at 89-91.

⁷ *Id.*

⁸ *Rollo* (G.R. No. 211146), Vol. 1, pp. 3-73; *rollo* (G.R. No. 211375), Vol. 1, pp. 3-77.

⁹ Revised *Ponencia*, p. 31.

¹⁰ *Id.* at 16.

¹¹ *Id.* at 27.

¹² *Id.* at 27-28.

¹³ *Id.* at 29.



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.¹⁴

While admittedly the private respondents established the presence of the second and fourth requisites, the presence of the first and third requisites appears doubtful, at most.

To establish the existence of the first requisite, the claimant must prove a clear right that is both grounded on and enforceable by law. The Court defined this requisite in the case of *Lim v. BPI Agricultural Development Bank*:¹⁵

One of the requisites for the issuance of a writ of preliminary injunction is that the applicant must have a right in *esse*. A right in *esse* is a clear and unmistakable right to be protected, one clearly founded on or granted by law or is enforceable as a matter of law. The existence of a right to be protected, and the acts against which the writ is to be directed are violative of said right must be established.¹⁶ (Underscoring omitted)

In this case, the private respondents may have established their ownership over the seized rice shipments, but they failed to establish the fact that they secured the necessary licenses to possess the same.

Presidential Decree (P.D.) No. 4, as amended by P.D. Nos. 699 and 1485,¹⁷ vested the NFA with various functions relating to food security, which includes ensuring the stability of the supply and prices of rice. On March 28, 1996, Republic Act (R.A.) No. 8178¹⁸ was passed, which expanded the powers of the NFA to establish rules for licensing, importing, and collection of fees and charges for rice importation:

Sec. 5. *Amendment.* – Subparagraph (xii), paragraph (1) Section 6 of Presidential Decree No. 4 (National Grains Authority Act), as amended, is hereby further amended to read as follows:

Sec. 6. (a) *Powers.* –

¹⁴ *Sumifru (Philippines) Corporation v. Spouses Cereño*, 825 Phil. 743, 750 (2018).

¹⁵ 628 Phil. 601 (2010).

¹⁶ *Id.* at 607.

¹⁷ Entitled “PROCLAIMING THE CREATION OF THE NATIONAL GRAINS AUTHORITY AND PROVIDING FUNDS THEREFOR,” approved on September 26, 1972. Reconstituted from the now defunct National Grains Authority after the issuance and effectivity of Presidential Decree No. 1770.

¹⁸ Entitled “AN ACT REPLACING QUANTITATIVE IMPORT RESTRICTIONS ON AGRICULTURAL PRODUCTS, EXCEPT RICE, WITH TARIFFS, CREATING THE AGRICULTURAL COMPETITIVENESS ENHANCEMENT FUND, AND FOR OTHER PURPOSES,” approved on March 28, 1996.



(xii) to establish rules and regulations governing the importation of rice and to license, impose and collect fees and charges for said importation for the purpose of equalizing the selling price of such imported rice with normal prevailing domestic prices.

In the exercise of this power, the Council after consultation with the Office of the President shall first certify to a shortage of rice that may occur as a result of a short-fall in production, a critical demand-supply gap, a state of calamity or other verified reasons that may warrant the need for importation: Provided, That this requirement shall not apply to the importation of rice equivalent to the Minimum Access Volume obligation of the Philippines under the WTO. The Authority shall undertake direct importation of rice or it may allocate import quotas among certified and licensed importers, and the distribution thereof through cooperatives and other marketing channels, at prices to be determined by the Council regardless of existing floor prices and the subsidy thereof, if any, shall be borne by the National Government.¹⁹ (Underscoring supplied)

With this express rule-making power, the NFA issued the questioned Memorandum Circular (MC), NFA MC No. AO-2K13-03-003, which requires rice importers to secure rice import permits before importation. This rice import permit must be distinguished from the Grains Business License, a license required under Regulation II of the Revised Rules and Regulations of the National Food Authority in Grains Businesses,²⁰ the pertinent provisions of which provides:

Section 1. Grains Business License and/or Grains Business Registration

All persons, natural or juridical, who are engaged or are intending to engage in the rice and/or corn industry shall apply for a grains business license and/or grains business registration with the Authority.

A license is an authority or a privilege granted to a qualified applicant to engage in a particular line of activity in the rice and/or corn industry. It is issued by the Authority in the exercise of its police power for purposes of regulation. A registration is issued by the Authority to grains businessman engaged in certain activities in the rice and/or corn industry for purposes of monitoring only.

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Section 3. Lines of Activity Covered by a License

¹⁹ Id.

²⁰ Approved on November 23, 2006.



The following lines of activities shall require an application for a license:

1. Retailing
2. Wholesaling
3. Milling
4. Warehousing
5. Threshing
6. Corn Shelling
7. Processing/Manufacturing
8. Exporting
9. Importing
10. Indenting
11. Packaging
12. Mechanical Drying
13. Mist Polishing
14. Manufacturing/ Processing; Distribution of Iron Rice Premix
(Underscoring supplied)

Here, the private respondents failed to show that they possessed either of these requirements. These are conditions *sine qua non* to the importation of rice in our country. That the private respondents performed acts relating to importation without the requisite authority squarely contradicts the finding that they proved their “clear and unmistakable right” to the rice shipments.

For the third requisite, the operative phrase is “irreparable injury.” As this Court has repeatedly defined, injury is considered irreparable if there is no standard by which the same can be measured with reasonable accuracy. The injury must be such that its pecuniary value cannot be estimated, and thus, cannot fairly compensate for the loss.²¹ As held in the case of *SM Investments Corporation v. Mac Graphics Carranz International Corp.*:²²

It is settled that a writ of preliminary injunction should be issued only to prevent grave and irreparable injury, that is, injury that is actual, substantial, and demonstrable. Here, there is no “irreparable injury” as understood in law. Rather, the damages alleged by the petitioner, namely, “immense loss in profit and possible damage claims from clients” and the cost of the billboard which is “a considerable amount of money” is easily quantifiable, and certainly does not fall within the concept of irreparable damage or injury as described in *Social Security Commission v. Bayona*:

Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy. “An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated

²¹ *Evy Construction and Development Corporation v. Valiant Roll Forming Sales Corporation*, 820 Phil. 123, 139 (2017).

²² 834 Phil. 106 (2018).



and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement.” An irreparable injury to authorize an injunction consists of a serious charge of, or is destructive to, the property it affects, either physically or in the character in which it has been held and enjoined, or when the property has some peculiar quality or use, so that its pecuniary value will not fairly recompense the owner of the loss thereof.

Here, any damage petitioner may suffer is easily subject to mathematical computation and, if proven, is fully compensable by damages. Thus, a preliminary injunction is not warranted. As previously held in *Golding v. Balatbat*, the writ of injunction —

should never issue when an action for damages would adequately compensate the injuries caused. The very foundation of the jurisdiction to issue the writ rests in the probability of irreparable injury, the inadequacy of pecuniary compensation, and the prevention of the multiplicity of suits, and where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.²³

In this case, while the private respondents Ngo and Galang established that they were at risk of losing the rice shipments, the amount corresponding to the seized goods could be easily calculated. As a matter of fact, Ngo testified during the proceedings in the RTC as to the amount not only of the rice shipment, but also of the demurrage and storage costs.²⁴

The burden to prove his or her right to injunctive relief is always with the claimant. Hence, if the claimant cannot discharge this burden, then it should not receive judicial relief. It cannot be overemphasized that injunction is an extraordinary remedy.²⁵

Therefore, I fully agree with the revised *ponencia* that the private respondents failed to establish their entitlement to the writ issued by the RTC.

I respectfully **CONCUR** and vote to **GRANT** the Petitions for *Certiorari* filed by the petitioners Secretary Proceso J. Alcala, as Secretary of the Department of Agriculture and Chairperson of the National Food Authority, together with Bureau of Customs, represented by Commissioner John Phillip P. Sevilla. The assailed Order, dated December 12, 2013, and

²³ Id. at 122-123.

²⁴ *Rollo* (G.R. No. 211146), Vol. 1, p. 83. In the Order dated December 12, 2013, it was reflected in the record that Ngo testified that he paid ₱21,300,000.00 for the seized rice shipment, and paid ₱8,335,000.00 for the demurrage and storage costs as of December 11, 2013.

²⁵ *Sumifru (Philippines) Corporation v. Spouses Cereño*, supra note 14, at 743.



the Order, dated December 13, 2013, as well as the December 13, 2013 Writ of Preliminary Injunction issued by the public respondent Judge Emmanuel C. Carpio of the Regional Trial Court, Branch 16, Davao City, in Civil Case No. 35,354-2013, in favor of private respondent Joseph M. Ngo; and the Order,²⁶ dated January 23, 2014, the Order²⁷ dated February 27, 2014, and the Amended Order,²⁸ dated February 28, 2014, together with the January 24, 2014 Writ of Preliminary Injunction²⁹ issued by the public respondent Judge Cicero D. Jurado, Jr. of the Regional Trial Court, Branch, Manila, in Civil Case No. CV-14-131261, in favor of the private respondent Danilo G. Galang, owner of the sole proprietorship St. Hildegard Grains Enterprises, and the private respondent Ivy M. Souza, proprietor of the Bold Bidder Marketing and General Merchandise are **REVERSED**.



MARIA FILOMENA D. SINGH
Associate Justice

²⁶ *Rollo* (G.R. No. 211375), Vol. I, pp. 83-85.

²⁷ *Id.* at 86-88.

²⁸ *Id.* at 89-91

²⁹ *Id.* at 92-93.