

Republic of the Philippines

SUPREME COURT

Manila

FIRST DIVISION

G.R. No. 94759 January 21, 1991

TECHNOLOGY DEVELOPERS, INC., petitioner,

vs.

**COURT OF APPEALS, HON. NARCISO T. ATIENZA as Presiding Judge,
Bulacan, RTC, and HON. VICENTE CRUZ, Acting Mayor and the
MUNICIPALITY OF STA. MARIA, BULACAN**, respondents.

Diosdado P. Peralta for petitioner.

GANCAYCO, J.:p

The authority of the local executive to protect the community from pollution is the center of this controversy.

The antecedent facts are related in the appealed decision of the Court of Appeals as follows:

Petitioner, a domestic private corporation engaged in the manufacture and export of charcoal briquette, received a letter dated February 16, 1989 from private respondent acting mayor Pablo N. Cruz, ordering the full cessation of the operation of the petitioner's plant located at Guyong, Sta. Maria, Bulacan, until further order. The letter likewise requested Plant Manager Mr. Armando Manese to bring with him to the office of the mayor on February 20, 1989 the following: a) Building permit; b) Mayor's permit; c) Region III-Pollution of Environment and Natural Resources Anti-Pollution Permit; and of other document.

At the requested conference on February 20, 1989, petitioner, through its representative, undertook to comply with respondent's request for the production of the required documents. In compliance with said undertaking, petitioner commenced to secure "Region III-Department of Environmental and Natural Resources Anti-Pollution Permit," although among the permits previously secured prior to the operation of petitioner's plant was a "Temporary Permit to Operate Air Pollution Installation" issued by the then National Pollution Control Commission (now

Environmental Management Bureau) and is now at a stage where the Environmental Management Bureau is trying to determine the correct kind of anti-pollution device to be installed as part of petitioner's request for the renewal of its permit.

Petitioner's attention having been called to its lack of mayor's permit, it sent its representatives to the office of the mayor to secure the same but were not entertained.

On April 6, 1989, without previous and reasonable notice upon petitioner, respondent acting mayor ordered the Municipality's station commander to padlock the premises of petitioner's plant, thus effectively causing the stoppage of its operation.

Left with no recourse, petitioner instituted an action for *certiorari*, prohibition, *mandamus* with preliminary injunction against private respondent with the court *a quo* which is presided by the respondent judge. In its prayer for the issuance of a writ of preliminary mandatory injunction, it alleged therein that the closure order was issued in grave abuse of discretion.

During the hearing of the application for the issuance of a writ of preliminary injunction on April 14, 1989, herein parties adduced their respective evidences. The respondent judge, April 19, 1989, found that petitioner is entitled to the issuance of the writ of preliminary mandatory injunction, hence, it ordered as follows:

In view of the foregoing, upon petitioner's posting of a bond in the amount of P50,000.00 to answer for such damages that respondents may sustain should petitioner eventually be found not entitled to the injunctive relief hereby issued, let a PRELIMINARY MANDATORY INJUNCTION issue ordering the respondent Hon. Pablo N. Cruz, and other person acting in his behalf and stead to immediately revoke his closure order dated April 6, 1989, and allow petitioner to resume its normal business operations until after the instant case shall have been adjudicated on the merits without prejudice to the inherent power of the court to alter, modify or even revoke this order at any given time.

SO ORDERED.

The writ of preliminary mandatory injunction was issued on April 28, 1989, upon petitioner's posting a bond in the amount of P50,000.00.

Private respondent filed his motion for reconsideration dated May 3, 1989. Said motion for reconsideration was heard on May 30, 1989. Petitioner's counsel failed to appear and the hearing proceeded with the Provincial Prosecutor presenting his evidence. The following documents were submitted:

a) Exhibit "A", Investigation report on the Technology Developers Inc., prepared by one Marivic Guina, and her conclusion and recommendation read:

Due to the manufacturing process and nature of raw materials used, the fumes coming from the factory may contain particulate matters which are hazardous to the health of the people. As such, the company should cease operating until such a time that the proper air pollution device is installed and operational.

b) Exhibits "B", "B-1", "B-2", three (3) sheets of coupon bond containing signatures of residents of Barangay Guyong, Sta. Maria, Bulacan;

c) Exhibit "B-3", a letter addressed to Hon. Roberto Pagdanganan Governor of the Province of Bulacan, dated November 22, 1988, complaining about the smoke coming out of the chimney of the company while in operation.

Reassessing all the evidence adduced, the lower court, on June 14, 1989, issued an order (a) setting aside the order dated April 28, 1989, which granted a Writ of Preliminary Mandatory Injunction, and (b) dissolving the writ consequently issued.

A motion for reconsideration dated July 6, 1989 was filed by petitioner. Said motion drew an opposition dated July 19, 1989 from private respondent.

Resolving the petitioner's motion for reconsideration, the respondent judge issued an order dated August 9, 1989, denying said motion for reconsideration.¹

Hence a petition for *certiorari* and prohibition with preliminary injunction was filed by petitioner in the Court of Appeals seeking to annul and set aside (a) the order issued by the trial court on June 14, 1989, setting aside the order dated April 28, 1989, and (b) the order of August 9, 1989, denying petitioner's motion for reconsideration of the order of June 14, 1989. In due course the petition was denied for lack of merit by the appellate court in a decision dated January 26, 1990.² A motion for reconsideration thereof filed by petitioner was denied on August 10, 1990.

Thus, the herein petition for review on *certiorari* filed with this Court. Six errors are alleged to have been committed by the appellate court which may be synthesized into the singular issue of whether or not the appellate court committed a grave abuse of discretion in rendering its question decision and resolution.

The petition is devoid of merit.

The well-known rule is that the matter of issuance of a writ of preliminary injunction is addressed to the sound judicial discretion of the trial court and its action shall not be disturbed on appeal unless it is demonstrated that it acted without jurisdiction or in excess of jurisdiction or otherwise, in grave abuse of its discretion. By the same token the court that issued such a preliminary relief may recall or dissolve the writ as the circumstances may warrant.

To the mind of the Court the following circumstances militate against the maintenance of the writ of preliminary injunction sought by petitioner:

1. No mayor's permit had been secured. While it is true that the matter of determining whether there is a pollution of the environment that requires control if not prohibition of the operation of a business is essentially addressed to the then National Pollution Control Commission of the Ministry of Human Settlements, now the Environmental Management Bureau of the Department of Environment and Natural Resources, it must be recognized that the mayor of a town has as much responsibility to protect its inhabitants from pollution, and by virtue of his police power, he may deny the application for a permit to operate a business or otherwise close the same unless appropriate measures are taken to control and/or avoid injury to the health of the residents of the community from the emissions in the operation of the business.

2. The Acting Mayor, in a letter of February 16, 1989, called the attention of petitioner to the pollution emitted by the fumes of its plant whose offensive odor "not only pollute the air in the locality but also affect the health of the residents in the area," so that petitioner was ordered to stop its operation until further orders and it was required to bring the following:

- (1) Building permit;

- (2) Mayor's permit; and

- (3) Region III-Department of Environment and Natural Resources Anti-Pollution permit.³

3. This action of the Acting Mayor was in response to the complaint of the residents of Barangay Guyong, Sta. Maria, Bulacan, directed to the Provincial Governor through channels.⁴ The alleged NBI finding that

some of the signatures in the four-page petition were written by one person,⁵ appears to be true in some instances, (particularly as among members of the same family), but on the whole the many signatures appear to be written by different persons. The certification of the barrio captain of said barrio that he has not received any complaint on the matter⁶ must be because the complaint was sent directly to the Governor through the Acting Mayor.

4. The closure order of the Acting Mayor was issued only after an investigation was made by Marivic Guina who in her report of December 8, 1988 observed that the fumes emitted by the plant of petitioner goes directly to the surrounding houses and that no proper air pollution device has been installed.⁷

5. Petitioner failed to produce a building permit from the municipality of Sta. Maria, but instead presented a building permit issued by an official of Makati on March 6, 1987.⁸

6. While petitioner was able to present a temporary permit to operate by the then National Pollution Control Commission on December 15, 1987, the permit was good only up to May 25, 1988.⁹ Petitioner had not exerted any effort to extend or validate its permit much less to install any device to control the pollution and prevent any hazard to the health of the residents of the community.

All these factors justify the dissolution of the writ of preliminary injunction by the trial court and the appellate court correctly upheld the action of the lower court.

Petitioner takes note of the plea of petitioner focusing on its huge investment in this dollar-earning industry. It must be stressed however, that concomitant with the need to promote investment and contribute to the growth of the economy is the equally essential imperative of protecting the health, nay the very lives of the people, from the deleterious effect of the pollution of the environment.

WHEREFORE, the petition is DENIED, with costs against petitioner.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino and Medialdea, JJ., concur.

Footnotes

1 Pages 117 to 119, *rollo*.

2 Justice Regina G. Ordoñez-Benitez was the *ponente*, Justices Lorna S. Lombos de la Fuente and Hector C. Fule concurred.

3 Annex A-2, petition.

4 Annex A-B, petition.

5 Annex A to motion for reconsideration, page 91, *rollo*.

6 Annex A-11, petition.

7 Annex A-9, petition.

8 Annex A-4, petition.

9 Annex A-12, petition.