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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **January 21, 2015** *which reads as follows:*

"G.R. No. 162478 – *JEREMIAS BERNARDINO, Petitioner, v. COURT OF APPEALS, DENR SECRETARY VICTOR RAMOS, and ENGINEER JOSELITO FUNTANAR, Respondents.*

The petitioner appeals the decision promulgated on July 24, 2003,[1] whereby the Court of Appeals (CA) affirmed the dismissal by the Regional Trial Court, Branch 5, (RTC) in Legazpi City, Albay of the two cases the petitioner had initiated on May 7, 2001.[2] He now claims that the CA thereby committed grave abuse of discretion amounting to lack or excess of its jurisdiction.

The CA recited the factual and procedural antecedents as follows:

> Jeremias Bernardino (hereafter BERNARDINO), Glenn Naparam (hereafter NAPARAM), Aniceto Ogayon (hereafter OGAYON) and Anastacio Casquejo (hereafter CASQUEJO) are farmers who allegedly represent various non-government organizations. BERNARDINO is an alleged beneficiary under the Comprehensive Agrarian Reform Program of the government with landholding at Barangay Palanog, Camalig,

- over – thirteen (13) pages .....

[1] *Rollo*, pp. 24-42; penned by Associate Justice Mercedes Gozo-Dadole (retired), with the concurrence of Associate Justice Conrado M. Vasquez, Jr. (later Presiding Justice/retired) and Associate Justice Rosmari D. Carandang.

[2] Id. at 17-22.

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Albay where he is the vice-chairman of the local Barangay Reform Committee (BARC). NAPARAM on the other hand is the Barangay Captain of Barangay Palalong, while OGAYON is the Chairman of BARC in Quibongbongan, Guinobotan, Albay. Barangay Palanog is surrounded by Barangays Quibongbongan, Miti, Mauroraro and Bariw, within a radius of one (1) kilometer, while Barangays Iluluan, Tagaytay, Libod, and Magcasili surround Barangay Palanog within a radius of two (2) kilometers.

It appears that over at Barangay Palanog, Camalig, Albay, including its environs and comprising several nearby barangays in the adjoining municipalities of Camalig and Guinobatan, a cement plant has been proposed to be erected by a group of investors from Taiwan. In relation thereto, then Undersecretary Antonio Laviña was allegedly scheduled to arrive in Legaspi City on November 27, 1997 to sign the Environmental Compliance Certificate {ECC} for the cement plant project at a ceremony scheduled to be held at the premises of Bicol University College of Agriculture and Forestry in the municipality of Guinobatan, Albay. In opposing the said project, the afore-mentioned farmers and their supporters, allegedly sought the help from Church Leaders, DENR, the DAR, the local government units concerned, and the Senate Committee on Environment, including Senator Alvarez, but to no avail.

In view thereof, BERNARDINO, NAPARAM, OGAYON and CASQUEJO, as plaintiffs, filed a Complaint (Record, p. 1) for Injunction, on November 24, 1997, with the Regional Trial Court, 5th Judicial Region of Legaspi City, Branch 8, docketed as Civil Case 9461, against DENR Secretary Victor Ramos (Sec. Ramos), the DENR Undersecretary Antonio Laviña (Undersecretary Laviña), and DENR Regional Executive Director Pedro Caleon (Regional Executive Dir. Caleon), as defendants. In the said complaint, plaintiffs alleged that the proposed cement plant contravenes existing laws on the matter, to wit:

> a) The public school in barangay Palanog will be physically shut down upon the initial operation of the cement factory, in violation of the Mining Act of 1994. Considering that the project encompasses as much as 1,066 hectares, the public schools in barangays Palanog, Mauraro and Quibongbong shall eventually be closed. Once these schools cease to operate, the children of the plaintiffs and those who are similarly situated would be deprived of elementary education within the locality, making it totally prohibitive on the part of said parents to have their children educated elsewhere, if it is to be considered that most of said parents are mere farmers for whose benefit the land reform program has precisely been evolved by the government.

b) Hoyop-hoyopan Cave shall be physically obliterated as soon as the mining operations are started. This violates Presidential Decree No. 1586 which categorizes tourist spots and national park as "Environmentally Critical Projects" whose degradation is prohibited under Presidential Proclamation No. 2146 dated December 14, 1981, and under related laws.

c) The degradation of the watershed reserve in the municipality of Guinobatan is likewise prohibited under Presidential Proclamation No. 2146 dated December 14, 1981, and under related laws.

With the aforestated legal impediments, plaintiffs contend that it would be unlawful for the defendants to issue any ECC for the purpose of converting the disputed area consisting of not less than 1,066 hectares into a cement quarry. Plaintiffs thus prayed for the issuance of a Temporary Restraining Order (TRO) preventing the defendants from issuing the disputed ECC affecting the proposed cement plant/quarry, and that after notice and hearing a Writ of Preliminary Injunction be issued and to make the said injunctive order permanent.

On February 5, 1998, defendants Ramos, Laviña, and Caleon, thru counsel, filed a Motion to Dismiss (Record, p. 20) on the grounds that the trial court was bereft of jurisdiction over the instant action, that plaintiffs do not have a cause of action, and that plaintiffs had failed to exhaust administrative remedies. Hence, the filing of the petition was premature. Moreover, defendants alleged that the petition for injunction cannot prosper against acts involving the exercise of judgment or discretion and that there was failure on the part of the plaintiffs to comply with the mandatory requirements of Supreme Court Administrative Circular 04-94, which is to file a certification against non-forum shopping. Defendants thus prayed that the petition for injunction be dismissed.

Thereafter, plaintiffs filed on March 4, 1998, a Motion for Leave to Amend Complaint (Record, p. 54) and for Admission of the Amended Complaint (Record, p. 56) with Manifestation stating that plaintiff CASQUEJO be dropped in the case for he joined the military service. Plaintiffs likewise averred that their motion takes precedence over the motion to dismiss filed by the defendants hence it should be acted upon before any motion to dismiss. The lower court then in its Order (Record, p. 79) dated March 17, 1998, issued by Judge A. Bo, granted the said motion and accordingly admitted the amended complaint. For their part, defendants filed a Supplemental Motion to Dismiss (Record, p. 80) reiterating the same grounds stated in their previous motion to dismiss filed on February 5, 1998.

After complying with the Environmental Impact Assessment (EIA) requirement as prescribed in the promulgated guidelines implementing Section 3 (b) of P.D. 1121 and P.D. 1586, on April 8, 1998, the DENR, thru Secretary Victor Ramos, granted ECC 9609-001-105C to the Cement Plant and Quarry Operations of Goodfound Chemical Industrial Corporation (GOODFOUND CORP. for brevity) and Ibalong Resources Development Corporation (IBALONG CORP. for brevity), subject to 43 conditions. As such, on April 22, 1998, plaintiffs filed a Manifestation (Record, p. 107) praying for immediate action for the injunctive reliefs. Also, on May 8, 1998, plaintiffs filed a Motion (Record, p. 121) to admit Supplemental Complaint (Record, p. 122) allegedly to place in perspective the issuance of the disputed ECC as well as to recognize their claim for damages. In their supplemental complaint, plaintiffs prayed that they be allowed to litigate as pauper, to declare the nullity of ECC 9609-087-105C and to condemn the defendants to indemnify them, jointly and severally, damages, attorney's fees and appearance fees. The supplemental complaint was admitted by Judge Beatriz Bo in her Order (Record, p. 137) dated May 20, 1998.

In an Order (Record, p. 152) dated June 5, 1998, Judge Beatriz Bo, issued a temporary restraining order (TRO) directing the President or General Manager of GOODFOUND CORP. and IBALONG CORP. and their representative agents and/or other persons acting for and in their behalf to cease and desist from implementing ECC No. 9609-001-105C within 20 days from receipt of the order. Thereafter, or on July 15, 1998, plaintiffs filed an Urgent Ex-Parte Manifestation (Record, p. 154) praying that a Writ of Preliminary Injunction be issued.

Meantime, after the issuance of the TRO, BERNARDINO filed on June 29, 1998 a Petition (Vol. II, Record, 1) for Contempt docketed as Spec Proc. No. 9559, against the representative of GOODFOUND CORP. and IBALONG CORP., Engr. Joselito Funtanar (hereafter FUNTANAR), for violating the terms of the TRO on June 26-27, 1998, by allegedly cutting around 215 coconut trees within the disputed area of the proposed cement plant/quarry at Palanog, Camalig, Albay, using ten pieces of mechanized cutting equipment. According to BERNARDINO, such act constituted contempt of court as (a) disobedience or resistance to a lawful writ, process, or order of a court; (b) abuse of or unlawful interference with the processes or proceedings of a court not constituting direct contempt; (c) an improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice. BERNARDINO therefore prayed to penalize FUNTANAR for contempt of court pursuant to Rule 71 of the Rules of Civil Procedure.

FUNTANAR, for his part, on August 5, 1998, filed a Comment/Answer (Vol. II, Record, p. 11) alleging that the restraining order is not valid and legal having been issued in violation of the Prohibitions in PD 605 and PD 1818 and in violation of his right to due process. Likewise, FUNTANAR argued that the TRO is void for failure to comply with Rule 58, Section 4 and Section 5 of the 1997 Rules of Civil Procedure which requires as a condition precedent to the issuance

of a restraining order, the filing and approval of bond. FUNTANAR further explained that despite the fact that he knew only on June 16, 1998 about the TRO, he still decided to wait for the expiration of the 20 day period before he resumed work by cutting coconut trees and by performing other acts towards the enforcement of the ECC on June 26, 1998. FUNTANAR therefore prayed for the dismissal of the contempt case and that the same be transferred to Branch 8, RTC, Albay as the resolution thereof must pass upon the validity or invalidity of an Order issued by the said court.

As prayed for, the contempt case (Spec. Proc. No. 9559) was transferred to RTC, Branch 8, where the principal case (Civil Case No. 9461) was pending, in an Order (Vol. II, Record, p. 19) dated August 11, 1998, issued by Judge Salvacion B. Espinas, RTC Branch 5, Legazpi City.

Meanwhile, in the light of recent developments and since Victor Ramos was replaced by a new DENR Secretary in the person of Antonio Cerilles, plaintiffs again filed a Motion for Leave to File Re-Amended Complaint (Record, p. 158) and to Admit the Re-Amended Complaint on September 1, 1998, pointing out that the project proponents have persisted to implement the proposed project on the basis of the ECC. In their Re-amended Complaint (Record, p. 159), plaintiffs BERNARDINO, NAPARAM and OGAYON included now as defendants in Civil Case No. 9461, DENR Secretary Antonio Cerilles, GOODFOUND CORP., IBALONG CORP., and Engr. Joselito Funtanar. Maintaining that they be allowed to litigate as pauper, plaintiffs prayed to make the injunctive order permanent and to declare the nullity of ECC No. 9609-001-105C.

As the Presiding Judge of Branch 8 went on leave and because of various incidents that are submitted for consideration and resolution of the court, Acting Presiding Judge Antonio C. Alfane issued an Order (Record, p. 178) dated September 9, 1998, directing the parties to submit their respective memorandum in support of their respective positions. Consequently, plaintiffs in their Memorandum (Record, p. 182) filed on September 24, 1998, averred that they should be entitled to the immediate admissions and service of the re-amended complaint and for the issuance of a writ of preliminary injunction. Defendants on the other hand, argued that the court has no jurisdiction and that the plaintiffs failed to exhaust administrative remedies. Defendants again pointed out that the power of the DENR to issue an ECC or deny an application is discretionary in nature, thus, beyond the lower court's intervention. Hence, defendants prayed that the re-amended complaint be denied admission and that the supplemental complaint be dismissed for lack of merit. Defendants likewise prayed that the issuance of preliminary injunction be denied (Memorandum, Record, p. 187).

On October 16, 1998, plaintiffs filed an Urgent Ex-Parte Manifestation (Record, p. 195) praying to admit and serve the amended complaint and to resolve their motion for injunctive relief.

On October 19, 1998, Acting Presiding Judge of Branch 8, RTC, Legazpi City, Gregorio A. Consulta, thereafter inhibited himself from handling Spec. Proc. No. 9559 and Civil Case No. 9461 (Vol. II, Record, p. 24). However, the said two cases were separated upon re-raffle following the demise of Judge Beatriz Bo, thus, plaintiffs filed on May 3, 1999, a Motion (Vol. II, Record, p. 29) praying that Spec. Proc. No. 9559 be consolidated again with Civil Case No. 9461. Finding the same to be well taken, an Order (Vol. II, Record, p. 31) dated May 10, 1999, was issued ordering the consolidation of the said case to Branch 5, where Civil Case No. 9461 was pending.

Thereafter, on March 19, 1999, plaintiffs filed a motion to resolve their motion (Vol. I, Record, p. 202) for leave to amend complaint and to admit re-amended complaint. Plaintiffs likewise prayed that summons be served upon the additional defendants and to set for hearing their application for preliminary injunction (Vol. I, Record, p. 203).

On April 22, 1999, defendants filed their Comment (Record, p. 211) on the Motion to Admit Re-Amended Complaint stating that the same did not cure the insufficiency identified in their motion to dismiss, such as the jurisdiction of the court and the exhaustion of administrative remedy before resort to court may be availed of. Defendants also pointed out that the issue on whether or not the area is agriculturally rich coconut land is already moot and academic because the same is no longer viable for agricultural use (Certification, Vol. I, Record, p. 214) wherein a certain Feliza Nuyda, was granted Environmental Clearance under EC-LC-961-05AL-015 and to which the Philippine Coconut authority interposed no objection (1-3 Record, p. 215).

On August 16, 1999, the Presiding Judge of Branch 5, Hon. Salvacion Espinas, issued an Order (Vol. I, Record, p. 224) requiring the defendants to show cause why a Writ of Preliminary Injunction making effective and permanent the TRO issued by the then presiding Judge Beatriz Bo dated June 5, 1998 should not be granted. Acting on the said order, defendant Canleon filed a Comment (Vol. I, Record, p. 225) on the issuance of the writ of preliminary injunction to which, according to the trial court is not responsive to its order dated August 16, 1999 (Vol. I, Record, p. 223). On October 19, 1999, plaintiffs again filed a Manifestation (Vol. I, Record, p. 228) praying that a Writ of Preliminary Injunction be issued making effective *pendente lite* the TRO dated June 5, 1998. On November 3, 1999, defendant Canleon also filed his comment (Vol. I, Record, p. 229) thereto to which plaintiffs also filed their Reply (Vol. I, Record, p. 233).

Hearings on the petition ensued, and Judge Vladimir B. Brusola thereafter rendered his Decision (Vol. I, Record, p. 279) dated May 7, 2001, dismissing the petition for injunction and likewise dismissing the contempt charges against FUNTANAR. In his decision, Judge Brusola pointed out that the complaint should have been dismissed pursuant to

the second paragraph of Section 5, Rule 7 of the Rules of Court because it did not have the requisite certification of non-forum shopping. According to Judge Brusola, this fatal defect is not curable by amendment thus, the admission of the amended complaint by the court in its Order of March 17, 1998 was not a valid order.

In addition, Judge Brusola observed that the Motion to Amend and to Admit Amended Complaint was served by mail without any explanation as to why it was not served personally. Hence, the same should be considered as not filed pursuant to Sec. 11, Rule 13 of the Rules of Court and that the order of Judge Beatriz Bo dated May 20, 1998 admitting the supplemental complaint claiming for damages is therefore void because of the aforesaid defect of the original complaint. More importantly, the judge also took note of the fact that plaintiffs did not pay the docket fees on the supplemental complaint in the amount of more than P2,000.00, as such, the said supplemental complaint should be considered as not filed at all and hence, summons were not served. Moreover, the trial court also noted that the motion to admit the supplemental complaint was served by mail without again an explanation why it was not served personally in violation of Sec. 11, Rule 13 of the Rules of Court.

Furthermore, Judge Brusola in his decision declared as null and void the restraining order dated June 5, 1998 issued by then Judge Beatriz Bo, because the President or General Manager of GOODFOUND CORP. or the IBALONG CORP. were not parties in this case so it had no authority or jurisdiction to order them to cease and desist from implementing the ECC dated April 8, 1998 issued to them by defendant DENR Sec. Ramos. Also, Judge Brusola considered as not filed the motion to re-amend the complaint and to admit re-amended complaint impleading additional defendants; namely, GOODFOUND CORP., the IBALONG CORP. and Engr. FUNTANAR because it was served to the said defendants by mail without any explanation why it was not served personally in violation of Sec. 11, Rule 13 of the Rules of Court.

On the other hand, Judge Brusola explained that even disregarding the foregoing fatal infirmities in the pleadings of the plaintiffs, the instant case is still dismissible for lack of cause of action and jurisdiction because the ECC was already signed on April 8, 1997 by DENR Secretary Victor Ramos without a restraining order. Hence, plaintiffs' objectives as to the original complaint had become moot and academic and besides nothing can be seen to prove that the plaintiffs exhausted administrative remedies before the instant case was filed.

Furthermore, the trial court emphasized that the DENR is empowered and tasked by law to grant and issue permits and licenses, enter into agreements, promulgate rules and regulations on the development, utilization and conservation of natural resources of the country as well as to matters relating to environment. Thus, in the exercise of its power to issue permits and licenses, the DENR is considered the competent authority to determine whether a

permit or license should be issued or not in the process of which it exercises its sound judgment and discretion. According to the trial court, it cannot substitute its own judgment for that of the DENR, hence, it cannot enjoin the implementation of the ECC and it has no jurisdiction to issue any restraining order, preliminary injunction or preliminary mandatory injunction in any case involving growing out of the issuance, approval, or disapproval, revocation, suspension of, or any action whatsoever, by the proper administrative official or body on concessions, licenses, permits, public patents or public grants of any kind in connection with the disposition, exploitation, utilization and exploration and/or development of the natural resources of the Philippines (Sec. 1, PD 605).

Finally, the trial court resolved to likewise dismiss the contempt incident stating that it had no jurisdiction to restrain or enjoin the President or General Manager of GOODFOUND CORP. and the IBALONG CORP., their representatives and those acting for and in their behalf to cease and desist from implementing ECC No. 9609-001-105C because they are not parties to the case. The trial court reiterated that the order dated June 5, 1998 was a void order and hence there is no legal or factual basis to charge respondent Engr. FUNTANAR with contempt for violating such void order.[3]

On July 24, 2003, the CA affirmed the RTC, holding thusly:

WHEREFORE, premises considered, the instant appeal is **DISMISSED** for lack of merit and the Decision dated May 7, 2001, of the Regional Trial Court, 5th Judicial Region, Branch 5, Legazpi City, in Civil Case Nos. 9461 and 9559 (Spec. No. 9559), is hereby **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.[4]

The petitioners moved for reconsideration, but the CA denied their motion for reconsideration on February 5, 2004.[5]

Hence, the petitioner assails the reversal of the decision of the CA by petition for *certiorari*, contending that the CA committed grave abuse of discretion amounting to lack or excess of jurisdiction by affirming the RTC despite the absence of findings of fact and without stating the law

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3 Id. at 25-33.
4 Id. at 42.
5 Id. at 48.

governing the state of facts obtaining in the case and without the benefit of a pretrial conference; that the issues were decided in the context of an interlocutory order resolving a motion to dismiss, but in the form of a decision on the merits; and that the decision disturbed previous orders or proceedings conducted by predecessor judges.[6]

In their comment,[7] the respondents counter that the decision of the RTC was complete in all respects, and accorded with the requirements of the Constitution;[8] that the RTC correctly dismissed the complaint for injunction and the petition for contempt; that the pretrial conference was not mandatory in an injunction suit, as distinguished form an ordinary civil suit; and that the RTC judge was bound to follow and implement the law, and was not concluded by the acts of his judicial predecessors in the case.

Ruling of the Court

We deny the petition for *certiorari*.

The special civil action for *certiorari* is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ of *certiorari* is directed against a tribunal, board or officer exercising judicial or quasi-judicial functions that acted without or in excess of its or his jurisdiction or with grave abuse of discretion. *Grave abuse of discretion* means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of *certiorari*, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[9] It is the petitioner who has the burden to prove that there is palpable mistake of jurisdiction on the part of the tribunal, whose decision he seeks to set aside. In the present case we find that the petitioner miserably failed to prove this as fact.

In our view, the CA correctly applied the law and jurisprudence in disposing of the matters before it, as follows:

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6 Id. at 8-9.
7 Id. at 59-90.
8 Id. at 75.
9 *Julie's Franchise Corporation v. Ruiz*, G.R. No. 180988, August 28, 2009, 597 SCRA 463, 471.

The requirement that the decisions of courts must be in writing and that they must be set forth clearly and distinctly the facts and the law on which they are based serves many functions. It is intended, among other things, to inform the parties of the reason or reasons for the decision so that if any of them appeals, he can point out to the appellate court the findings of facts or the rulings on points of law with which he disagrees. More than that, the requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning.

In the present case, the appellants do not question the truth of the facts as found by the judge, rather, they are assailing the way in which those findings were arrived at, a procedure which they contend was violative of the Constitution. However, a perusal of the assailed Decision dated May 7, 2001, reveals that the same sufficiently complies with Section 14 (1), Article VII of the 1987 Constitution. After assessing the case, Judge Brusola rendered his decision and the same readily reveals the facts and the law in which he based his decision. This is sufficient compliance with the Constitution and in any event, we hold that his conclusions are supported by the evidence on record. In fine, the trial court's decision substantially complies with the mandate of Article VIII, Section 14 of the Constitution that a decision must express "therein clearly and distinctly the facts and the law on which it was based."

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The requirement to file a certificate of non-forum shopping is mandatory. Failure to comply with this requirement cannot be excused by the fact that plaintiff is not guilty of forum shopping. Judge Brusola is, therefore, correct in concluding that the original complaint should have been dismissed. The aforestated rule applies to any complaint, petition, application, or any other initiatory pleading, regardless of whether the party filing it has actually committed forum shopping. Every party filing a complaint or any other initiatory pleading is required to swear under oath that he has not and will not commit forum shopping. Otherwise, we would have an absurd situation where the parties themselves would be the judge of whether their actions constitute a violation of said Rule, and compliance therewith would depend on their belief that they might or might not have violated the requirement. Such interpretation of the requirement would defeat the very purpose of the Rule.

In contrasts, appellants gave no reason at all for their failure to submit the certificate in question. As earlier stressed, this fatal defect is not curable by amendment, thus, the admission of the amended complaint by the court in its order dated March 17, 1998 is not a valid order and did not in any way cure the defect of the complaint. Besides, appellants did not even pay the docket fees on the supplemental complaint and the motion to amend and to admit amended complaint was served by mail but no explanation was given why it was not served

personally so said motion to amend complaint should also be considered as not filed pursuant to Section 11, Rule 13. In view thereof, we cannot definitely subscribe to the contention of the appellants that Judge Brusola's decision is vitiated because of the failure of the court to conduct pre-trial conference and that Judge Brusola did not examine the records carefully after he received the same from the other branch.

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More importantly, this Court also took note of the fact that herein appellants failed to exhaust administrative remedies before the case was filed. Exhaustion of the remedies in the administrative forum, being a condition precedent prior to one's recourse to the courts and more importantly, being an element of appellant's right of action, is too significant to be waylaid by the lower court. As a rule, where the law provides for the remedies against the action of an administrative board, body, or officer, relief to courts can be sought only after exhausting all remedies provided. Although, the rule on exhaustion of administrative remedies is not absolute but admits of exceptions such as when the question is purely legal, this case however is different.[10]

Upon a thorough and delicate scrutiny of the records and relevant jurisprudence on the matter, we agree with the trial court that the appellants have not shown a clear and unmistakable right to be protected in contrast to the DENR's authority and propriety to issue the ECC in question. As pointed out, there is a process to be followed in the issuance of an ECC which is upon application for an ECC with the Environmental Management Bureau (EMB) an Environmental Impact Assessment (EIA) will be conducted under the Environmental Impact System (EIS). An environmental system is a process of organization, administration and procedure institutionalized for the purpose of undertaking on the quality of the physical, biological and socio-economic environment and designing appropriate preventive, mitigating and enhancement measures. Also, the EIA documents were submitted to the EIA Review Committee (EIARC), a body of technical experts and professionals of known probity in their fields. As stated, the EIARC recommended for the issuance of an ECC to the proposed cement plant and quarry operations, thus, DENR Secretary Victor Ramos issued ECC No. 9609-081-105C on April 8, 1998 after more than two (2) years of evaluation. From the evidence adduced, nowhere along the processing of the ECC did the appellants ever show their opposition. (Decision, pp. 4-5) In short, the matter of determining whether appellants' livelihood and comfort will be prejudiced by the establishment of the cement plant and of the quarrying operations is essentially addressed to the DENR.

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[10] Id. at 37-38.

> An examination of the original complaint (Record, p.1) the amended complaint (Record, p. 56) which was admitted by the court in its order dated March 17, 1998, and the motion to admit supplemental complaint filed on May 8, 1998 (Record, p. 122) apparently shows that Funtanar was not yet impleaded as a party in this case when Judge Beatriz Bo issued a temporary restraining order (Record, p. 153) on June 5, 1998, directing the President or General Manager of GOODFOUND CORP. and/or IBALONG CORP., and their representative agents and/or other persons acting for and in their behalf to cease and desist from implementing ECC No. 9609-001-105C. As such, FUNTANAR should not be bound by any order (particularly the TRO)that will be rendered by the court wherein he is not impleaded as a party thereto. As shown in the records, it was only on September 1, 1998, that herein appellants seek to file a motion for leave to file re-amended complaint and to admit the re-amended pleading formally including now GOODFOUND CORP., IBALONG CORP., and FUNTANAR, as party defendants. The principle of due process should be followed, that is, before one can be bound by the proceedings in the court, that party must be impleaded as one of the parties in the case. Hence, it can fairly be inferred that there is no legal or factual basis to charge FUNTANAR with contempt.[11]

Considering that the issues and arguments presented in the petition for *certiorari* are a mere rehash of those raised and determined in the CA, and there being nothing new or compelling to vary from the determination by the CA, the Court affirms the CA's determination.

WHEREFORE, we **AFFIRM** the decision promulgated on July 24, 2003; and **ORDER** the petitioner to pay the costs of suit.

SO ORDERED."

Very truly yours,

EDGAR O. ARICHETA
Division Clerk of Court
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Mr. Jeremias Bernardino
Petitioner
Palanog, Camalig
4502 Albay

Court of Appeals (x)
Manila
(CA-G.R. CV No. 71135)

The Solicitor General (x)
Makati City

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[11] Id. at 34-41.

The Hon. Presiding Judge
Regional Trial Court, Br. 5
Legazpi City 4500
(Civil Case Nos. 9461 & 9559)

Atty. Reena Lilma Nieva
4500 Legaspi City

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