



Republic of the Philippines  
**Supreme Court**  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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**FIRST DIVISION**

**CITY OF BATANGAS, represented  
 by Hon. Severina Vilma Abaya,<sup>1</sup> in  
 her capacity as City Mayor of  
 Batangas,**

Petitioner,

- versus -

**G.R. No. 195003**

Present:

SERENO, C.J., Chairperson,  
 LEONARDO-DE CASTRO,  
 DEL CASTILLO,  
 PERLAS-BERNABE, and  
 CAGUIOA, JJ.

**PHILIPPINE SHELL  
 PETROLEUM CORPORATION  
 and SHELL PHILIPPINES  
 EXPLORATION B.V.,**

Respondents.

Promulgated:

**JUN 07 2017**

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**DECISION**

**CAGUIOA, J.:**

The policy of ensuring the autonomy of local governments was not intended to create an *imperium in imperio* and install intra-sovereign political subdivisions independent of the sovereign state.<sup>2</sup> As agents of the state, local governments should bear in mind that the police power devolved to them by law must be, at all times, exercised in a manner consistent with the will of their principal.

*The Case*

This is a petition for review on *certiorari*<sup>3</sup> (Petition) filed under Rule 45 of the Rules of Court against the Decision<sup>4</sup> dated May 25, 2010 (Assailed Decision) and Resolution<sup>5</sup> dated December 30, 2010 (Assailed Resolution) in CA-G.R. CV No. 90373 rendered by the Tenth Division of the Court of Appeals (CA). The Assailed Decision and Resolution stem from an appeal

<sup>1</sup> Referred to as Vilma Severina A. Dimacuha elsewhere in the records.

<sup>2</sup> *Batangas CATV, Inc. v. Court of Appeals*, 482 Phil. 544, 571 (2004).

<sup>3</sup> *Rollo*, pp. 3-21.

<sup>4</sup> Id. at 315-333. Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ramon R. Garcia and Manuel M. Barrios concurring.

<sup>5</sup> Id. at 335-336.

from the Decision<sup>6</sup> dated June 29, 2007 rendered by the Regional Trial Court of Batangas City (RTC), Branch 84 in SP. Civil Case Nos. 7924-7925, declaring as invalid Ordinance No. 3, series of 2001,<sup>7</sup> (Assailed Ordinance), enacted by the *Sangguniang Panlungsod* (*Sangguniang Panlungsod*) of the City of Batangas (Batangas City).<sup>8</sup>

### *The Facts*

Batangas City is a local government unit created by virtue of its charter, Republic Act No. 5495 (RA 5495). Under RA 5495, Batangas City constitutes a political body corporate, and is endowed with powers which pertain to a municipal corporation.<sup>9</sup> The *Sangguniang Panlungsod* is the legislative body of Batangas City.

Philippine Shell Petroleum Corporation (PSPC) is a duly organized Philippine corporation engaged in the business of manufacturing, refining and distribution of petroleum products.<sup>10</sup> PSPC owns and operates a refinery situated in Tabangao, Batangas City (Tabangao Refinery).<sup>11</sup>

Shell Philippines Exploration, B.V. (SPEX) is a foreign corporation licensed to do business in the Philippines.<sup>12</sup> In furtherance of the mandate of Presidential Decree No. 87 (PD 87) to promote the discovery and production of indigenous petroleum, the Department of Energy (DOE) executed Service Contract No. 38 (SC 38) with SPEX under which SPEX was tasked to explore and develop possible petroleum sources in North Western Palawan.<sup>13</sup> SPEX's exploration led to the discovery of an abundant source of natural gas in the Malampaya field off the shores of Palawan, which thereafter gave rise to the Malampaya Project. The Malampaya Project required the construction of a 504-kilometer offshore pipeline for the transport of natural gas from Malampaya field to Batangas, for treatment in PSPC's Tabangao Refinery.<sup>14</sup>

On May 28, 2001, the *Sangguniang Panlungsod* enacted the Assailed Ordinance which requires heavy industries operating along the portions of Batangas Bay within the territorial jurisdiction of Batangas City to construct desalination plants to facilitate the use of seawater as coolant for their industrial facilities.<sup>15</sup> The pertinent portions of the Assailed Ordinance state:

<sup>6</sup> Id. at 64-90. Penned by Presiding Judge Paterno V. Tac-an.

<sup>7</sup> Entitled "AN ACT REQUIRING ALL ESTABLISHED HEAVY INDUSTRIES AND THOSE TO BE ESTABLISHED ALONG THE BATANGAS CITY PORTION OF THE BATANGAS BAY AND OTHER AREAS DECLARED AS HEAVY INDUSTRIAL ZONE TO CONSTRUCT DESALINATION PLANT AND PROHIBITING THE USE OF EXPLOITATION OF UNDERGROUND FRESH WATER FOR COOLING SYSTEM AND INDUSTRIAL PURPOSES," *rollo*, pp. 24-26.

<sup>8</sup> *Rollo*, pp. 89-90.

<sup>9</sup> RA 5495, Sec. 3.

<sup>10</sup> *Rollo*, pp. 139-140.

<sup>11</sup> Id. at 141.

<sup>12</sup> Id. at 191.

<sup>13</sup> Id. at 193.

<sup>14</sup> Id. at 194-196.

<sup>15</sup> Batangas City Ordinance No. 3, s. 2001, Sec. 3; id. at 25.

SECTION 3. – MANDATORY REQUIREMENT FOR THE APPROVAL OF HEAVY INDUSTRIES ALONG THE BATANGAS CITY PORTION OF BATANGAS BAY AND OTHER AREAS. – In addition to the requirements provided by laws and ordinances, the City Government shall not grant permit or clearance or its approval for any project or program involving the construction or establishment of heavy industries along the Batangas City portion of the Batangas Bay and other areas delineated as Heavy Industrial Zone without the required DESALINATION PLANT for use of sea water instead of underground fresh water for cooling system and industrial purposes.

SECTION 4. – GRACE PERIOD PROVIDED FOR HEAVY INDUSTRIES. – All heavy industries already established or approved by the City Government prior to the enactment of this Ordinance, including those to be established, are granted a period of five (5) years, counted from the date of approval of this Ordinance, to install [a] desalination plant.

SECTION 5. – AUTHORITY TO GRANT EXEMPTION FROM THE CONSTRUCTION OF DESALINATION PLANT. – The City Mayor with the concurrence of the Sangguniang Panlungsod may grant exemption for a given period to an industry from installation or construction of DESALINATION PLANT on the basis of the following conditions:

- 5.1. The exemption will not adversely affect the environment, public health, public safety and the welfare of the people, more particularly, the local aquifers, as shown by a comprehensive ground water assessment or comprehensive hydrological study conducted by the industry and presented by the industry applying for exemption.
- 5.2. The industry or proposed project will support economic-based activities and provide livelihood, employment, vital community services and facilities while at the same time posing no adverse effect on the community.
- 5.3. A public hearing is conducted.
- 5.4. Such other reasonable conditions which the City Mayor may require with the concurrence of the Sangguniang Panlungsod.

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SECTION 7. PENAL CLAUSE. – Any person who shall authorize the start of the construction, development or operation of any project considered as heavy industry without the approval of the government authorities herein mentioned shall suffer an imprisonment of not less than six (6) months nor more than one (1) year and a fine of P5,000.00.

If the violator is a juridical person or association, the penalty shall be imposed upon the owner, President, project manager and/or persons directly in charge of the construction, development and operation of the project.

SECTION 8. POWER OF THE CITY MAYOR TO ISSUE A CEASE AND DESIST ORDER. – The City Mayor, upon knowledge of



the violation of this ordinance shall issue a cease and desist order for the stoppage of the construction, development or operation of the project or industry and shall exercise all powers necessary to give effect to the said order.

SECTION 9. ADMINISTRATIVE FINE. – An administrative fine/penalty of P5,000.00 per day of violation of this ordinance shall be imposed upon the owner, President, project manager, and/or persons directly in charge of the construction, development and operation of the project or industry.<sup>16</sup>

The Assailed Ordinance was approved by the city mayor on June 7, 2001.

Heavy industries subject of the Assailed Ordinance had until May 28, 2006 to comply with its provisions.<sup>17</sup> Among the facilities affected by the Assailed Ordinance is PSPC's Tabangao Refinery.

#### *Proceedings before the RTC*

On May 23, 2006, PSPC filed against Batangas City and the *Sangguniang Panlungsod* a Petition for Declaration of Nullity (PSPC Petition) before the RTC praying that the Assailed Ordinance be declared null and void. The PSPC Petition was raffled to Branch 84, and docketed as SP Civil Case No. 7924.<sup>18</sup> Thereafter, SPEX filed a petition-in-intervention (Intervention) praying for the same relief.<sup>19</sup>

JG Summit Petrochemical Corporation (JG Summit) and First Gas Power Corporation (First Gas) filed similar petitions docketed as SP Civil Case Nos. 7925 (JG Summit Petition) and 7926 (First Gas Petition), respectively.<sup>20</sup> These petitions were likewise raffled to Branch 84, and consolidated with the PSPC Petition for joint trial.<sup>21</sup>

For its part, PSPC averred that the Assailed Ordinance constitutes an invalid exercise of police power as it failed to meet the substantive requirements for validity.<sup>22</sup> Particularly, PSPC argued that the Assailed Ordinance contravenes the Water Code of the Philippines (Water Code), and encroaches upon the power of the National Water Resources Board (NWRB) to regulate and control the Philippines' water resources.<sup>23</sup> In addition, Batangas City and the *Sangguniang Panlungsod* failed to sufficiently show the factual or technical basis for its enactment.<sup>24</sup> In this connection, PSPC

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<sup>16</sup> *Rollo*, pp. 25-26.

<sup>17</sup> *Id.* at 318-319.

<sup>18</sup> *Id.* at 136-183, 315, 319.

<sup>19</sup> *Id.* at 190-227.

<sup>20</sup> *Id.* at 93.

<sup>21</sup> *Id.* at 93, 96.

<sup>22</sup> *Id.* at 138.

<sup>23</sup> *Id.* at 149.

<sup>24</sup> *Id.* at 138.

alleged that the Assailed Ordinance unduly singles out heavy industries, and holds them solely accountable for the loss of water and destruction of aquifers without basis, resulting in the deprivation of their property rights without due process of law.<sup>25</sup>

On the procedural aspect, PSPC contended that the Assailed Ordinance was not posted or published in a newspaper of general circulation in the province, nor were public hearings or consultations involving concerned parties conducted thereon.<sup>26</sup> Further, there are no records showing that the Assailed Ordinance, as approved by the *Sangguniang Panlungsod*, was forwarded to the *Sangguniang Panlalawigan* of the Province of Batangas after it was approved by the city mayor, as required by Section 56 of the Local Government Code (LGC).<sup>27</sup>

SPEX essentially adopted the allegations of PSPC and prayed for the same relief, asserting that it possesses material and direct interest in the subject matter of the PSPC Petition.<sup>28</sup>

In response, Batangas City and the *Sangguniang Panlungsod* maintained that they have the power to enact the Assailed Ordinance pursuant to the general welfare clause under the LGC.<sup>29</sup> According to them, the rationale of the Assailed Ordinance is to stop PSPC and other industries similarly situated from relying “too much” on ground water as coolants for their machineries, and alternatively promote the use of seawater for such purpose, considering that fresh ground water is a “perishable commodity.”<sup>30</sup> Further, Batangas City and the *Sangguniang Panlungsod* countered that the “regulation or prohibition” on the use of ground water is merely incidental to the main purpose of the Assailed Ordinance, which is to compel heavy industries such as PSPC to construct desalination plants. Hence, provisions having regulatory and prohibitive effect may be taken out of the Assailed Ordinance without entirely impairing its validity.<sup>31</sup>

Further, Batangas City and the *Sangguniang Panlungsod* took exception to PSPC’s allegations and asserted that the Assailed Ordinance had been published in *Dyaryo Veritas*, a newspaper of general circulation in the area. Moreover, Batangas City and the *Sangguniang Panlungsod* claimed that a joint public hearing on the Assailed Ordinance had in fact been conducted by the *Sangguniang Panlungsod* and *Sangguniang Panlalawigan*, where PSPC was duly represented.<sup>32</sup> In addition, Batangas City and the *Sangguniang Panlungsod* argued that the requirement of referral of

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<sup>25</sup> Id. at 149.

<sup>26</sup> Id. at 139, 150.

<sup>27</sup> Id. at 150, 178.

<sup>28</sup> Id. at 190-191.

<sup>29</sup> Id. at 229.

<sup>30</sup> Id.

<sup>31</sup> Id. at 230.

<sup>32</sup> Id.

ordinances to the *Sangguniang Panlalawigan* applies only to tax and other revenue measures.<sup>33</sup>

Finally, Batangas City and the *Sangguniang Panlungsod* averred that since PSPC and SPEX, along with other concerned heavy industries, essentially question the former's authority to regulate and prohibit the use of fresh ground water, they should have first referred their grievances to NWRB by filing a complaint for adjudication on the threatened revocation of their existing water permits.<sup>34</sup>

On June 21, 2007, the RTC resolved the First Gas Petition by issuing a Decision declaring the Assailed Ordinance null and void.<sup>35</sup>

Subsequently, on June 29, 2007 the RTC rendered a Decision,<sup>36</sup> this time resolving the PSPC and JG Summit petitions. The dispositive portion of said Decision reads:

It is evident that from foregoing factual milieu and parameters, the questioned ordinance is INVALID, as it is hereby declared INVALID, in its entirety for want of necessity and for not conducting prior public hearing, and for violating the due process clause of the Constitution with respect to its (sic) Sec. 8, City Ordinance No. 3, [s]. 2001.

No pronouncement as to costs.

SO ORDERED.<sup>37</sup>

The RTC gave credence to the testimony of PSPC's witness Engineer Joeffrey Caranto (Engineer Caranto) who conducted a hydrogeology study on the Tabangao-Malitam watershed from which PSPC sources fresh ground water.<sup>38</sup> The RTC summarized the findings of said study in this wise:

1. A water balance x x x calculation of the Tabangao-Malitam groundwater system shows that the natural recharge (replenishment) rate far exceeds the current demand for water in the area. Hence, **there is no threat of depletion of the groundwater resource[s] in the Tabangao-Malitam [w]atershed that purportedly may result from PSPC's deep well pumping.**
2. **Water levels in the PSPC wells have not lowered significantly over the last three (3) decades, indicating that there is no substantial diminution of the supply of groundwater.**
3. Among the four PSPC wells, only one [1] well shows very slightly elevated levels of chloride at 300 milligrams per liter which however is very low compared to seawater (which measures 20,000 milligrams of chloride per liter). The chloride levels in the other nearby PSPC

<sup>33</sup> Id.

<sup>34</sup> Id. at 265-266.

<sup>35</sup> Id. at 30-31.

<sup>36</sup> Supra note 6.

<sup>37</sup> Id. at 89-90.

<sup>38</sup> Id. at 72, 88.

wells are all within drinking water standards and have not increased in the last four (4) decades of usage. **This indicates that salt water intrusion is not occurring in the PSPC wells.**<sup>39</sup> (Emphasis supplied)

The RTC also noted that the *Sangguniang Panlungsod* failed to consult the NWRB before enacting the Assailed Ordinance, thereby encroaching upon its authority.<sup>40</sup>

Anent Section 8, the RTC concluded that the power granted to the city mayor to cause the issuance of cease and desist orders against the use of ground water without prior notice and hearing constitutes a violation of the due process clause.<sup>41</sup>

### *Proceedings before the CA*

Batangas City and the *Sangguniang Panlungsod* filed separate notices of appeal from the decisions resolving the PSPC, JG Summit and First Gas petitions.<sup>42</sup>

The appeals against JG Summit and First Gas were raffled to the Fourth Division (CA Fourth Division) and were docketed as CA-G.R. CV Nos. 90324 (JG Summit Appeal) and 90365 (First Gas Appeal), respectively. Meanwhile, the appeal filed against PSPC and SPEX was raffled to the Tenth Division (CA Tenth Division), and docketed as CA-G.R. CV No. 90373 (PSPC Appeal).

In the PSPC Appeal, Batangas City and the *Sangguniang Panlungsod*, as appellants, averred that the RTC failed to consider the testimonies of barangay captains Joel Caaway and Calixto Villena of Barangays Tabangao Aplaya and Pinamucan, respectively, who testified that some wells in their areas had dried up, while others had begun to produce salt water.<sup>43</sup> These testimonies, according to Batangas City and the *Sangguniang Panlungsod*, serve as sufficient factual bases for the enactment of the Assailed Ordinance, as “there could be no higher degree of evidence than the actual experience of the inhabitants in the area.”<sup>44</sup>

On May 28, 2009, the CA Fourth Division issued a Joint Decision<sup>45</sup> resolving the JG Summit and First Gas appeals. **The Joint Decision**

<sup>39</sup> Id. at 73.

<sup>40</sup> Id. at 89; Presidential Decree No. 424, as amended by Presidential Decree No. 1067 and Executive Order No. 124-A, series of 1987.

<sup>41</sup> Id.

<sup>42</sup> Id. at 30-31, 92-93.

<sup>43</sup> Id. at 84-85.

<sup>44</sup> Id. at 101-102.

<sup>45</sup> Id. at 30-59. Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Fernanda Lampas Peralta and Apolinario D. Bruselas, Jr. concurring.



**affirmed the RTC's decisions in SP Civil Case Nos. 7924-7925 (involving JG Summit and PSPC) and 7926 (involving First Gas).<sup>46</sup>**

On October 15, 2009, the CA Tenth Division directed Batangas City and the *Sangguniang Panlungsod* on one hand, and PSPC and SPEX on the other, to file their respective memoranda on the filing of separate appeals, and the implications of the Joint Decision of the CA Fourth Division on the resolution of the PSPC Appeal.<sup>47</sup>

In their Joint Memorandum,<sup>48</sup> PSPC and SPEX averred that the Joint Decision in the JG Summit and First Gas appeals bars a contrary decision in the PSPC Appeal, pursuant to the principle of judicial stability.<sup>49</sup> PSPC and SPEX further contended that the filing of multiple appeals involving the same issues and parties was tantamount to forum shopping.<sup>50</sup>

In their defense, Batangas City and the *Sangguniang Panlungsod* claimed that the filing of separate appeals was made necessary by the fact that the separate decisions of the RTC in SP Civil Case Nos. 7924-7925 and 7926 were issued more than fifteen (15) days apart.<sup>51</sup>

On the basis of the submissions of the parties, the CA Tenth Division issued the Assailed Decision dismissing the appeal filed against PSPC and SPEX for lack of merit. The relevant portions of the Assailed Decision read:

**City Ordinance No. 3, S.2001 contravenes Presidential Decree No. 1067, better known as “*The Water Code of the Philippines*” as it is an encroachment into the authority of the [NWRB]. The use of water resources is under the regulatory power of the national government. This is explicit from the provisions of the Water Code which states that —**

“The utilization, explo[i]tation, development, conservation and protection of water resources shall be subject to the control and regulation of the government through the [NWRB]”.

Although respondents-appellants insist that the city ordinance is not an absolute prohibition but merely a regulation on the use of fresh groundwater for cooling systems and industrial purposes the argument cannot justify the attempt to usurp the NWRB's power to regulate and control water resources. Moreover, not only does the city ordinance prohibit or regulate the use of fresh groundwater in disregard of previously granted water permits from the NWRB but also directs the installation of desalination plants for purposes of utilizing sea water, without the requisite water permit from the NWRB.

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<sup>46</sup> Id. at 30-31, 58-59.

<sup>47</sup> Id. at 325.

<sup>48</sup> The Joint Memorandum does not form part of the records of the case.

<sup>49</sup> *Rollo*, p. 325.

<sup>50</sup> Id. at 325-326.

<sup>51</sup> Id. at 326.

x x x The police power of the *Sangguniang Panlungsod* is subordinate to the constitutional limitations that its exercise must be reasonable and for the public good. Without the concurrence of these two requisites, the ordinance will not muster the test of a valid police measure and should be struck down. The trial court aptly examined the city ordinance against the requirement of reasonable necessity and correctly concluded that the subject ordinance failed to prove that it was reasonably necessary to prohibit heavy industries from using ground water and requiring them instead to construct desalination plants. There must be a reasonable relation between the purposes of the police measure and the means employed for its accomplishment. Arbitrary invasion of personal rights and those pertaining to private property will not be allowed even under the guise of protecting public interest. It has not been sufficiently demonstrated that there exists no other means less intrusive of private rights that would equally be effective for the accomplishment of the same purpose.

With the foregoing premises considered, there is no more necessity to address the other errors raised in the instant appeal.

**WHEREFORE**, the appeal is **DISMISSED**. The Decision dated 29 June 2007 rendered by the Regional Trial Court of Batangas City, Branch 84, in SP Civil Case No. 7924, declaring invalid City Ordinance No. 3, S.2001 is hereby **AFFIRMED**.

**SO ORDERED.**<sup>52</sup> (Emphasis supplied)

Batangas City and the *Sangguniang Panlungsod* filed a Motion for Reconsideration<sup>53</sup> (MR) dated June 21, 2010, which the CA Tenth Division subsequently denied through the Assailed Resolution. The CA Tenth Division found that the MR merely reiterated the arguments relied upon in the appeal, which were already passed upon in the Assailed Decision.<sup>54</sup>

Batangas City and the *Sangguniang Panlungsod* received a copy of the Assailed Resolution on January 13, 2011.

On January 25, 2011, Batangas City filed the present Petition.<sup>55</sup> Notably, the Petition does not name the *Sangguniang Panlungsod* as party,<sup>56</sup> and only the signature of then city mayor Severina Vilma Abaya appears on the Verification and Certification of Non-Forum Shopping attached thereto.<sup>57</sup>

PSPC and SPEX filed a Motion for Additional Time<sup>58</sup> dated April 1, 2011, praying for a period of ten (10) days therefrom to file their comment.

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<sup>52</sup> Id. at 330-332.

<sup>53</sup> Id. at 111-132.

<sup>54</sup> Id. at 335-336.

<sup>55</sup> Id. at 3.

<sup>56</sup> Id.

<sup>57</sup> Id. at 19-20. There being no indication that the Petition was likewise filed on behalf of the *Sangguniang Panlungsod*, Batangas City was deemed as sole petitioner hereunder.

<sup>58</sup> Id. at 304-307.

Thereafter, PSPC and SPEX filed a Second Motion for Additional Time<sup>59</sup> dated April 11, 2011, praying for an additional period of seven (7) days to file said comment. Finally, PSPC and SPEX filed their Joint Comment on and/or Opposition to the Petition for Review on *Certiorari*<sup>60</sup> (Joint Comment/Opposition) dated April 25, 2011 on even date.

Batangas City failed to timely file its reply to the Joint Comment/Opposition, prompting them to file a Manifestation and Motion for Extension of Time to File a Reply (Manifestation and Motion) dated December 12, 2011.<sup>61</sup> The Manifestation and Motion prayed that it be granted twenty (20) days therefrom to file its reply.<sup>62</sup> Accordingly, Batangas City filed its Reply dated December 21, 2011 on even date.<sup>63</sup>

### *The Issue*

The sole issue for this Court's determination is whether the CA erred in affirming the RTC Decision which declared the Assailed Ordinance invalid.

### *The Court's Ruling*

Batangas City contends that it has the legal authority to enact ordinances in the exercise of its police power for the purpose of promoting the general welfare of its inhabitants.<sup>64</sup> Thus, it asserts that it has the power to regulate PSPC's and SPEX's right to use ground water, as continued use would be injurious to public interest.<sup>65</sup>

Further, Batangas City insists that there is factual basis to justify the enactment of the Assailed Ordinance.<sup>66</sup> As testified to by barangay captains Joel Caaway and Calixto Villena, a gradual change in the quality and quantity of ground water had taken place due to the increase in the number of industrial plants along Batangas Bay.<sup>67</sup> According to Batangas City, these testimonies should be given more weight, since they are based on "actual facts and experience."<sup>68</sup>

These assertions lack merit.

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<sup>59</sup> Id. at 340-343.

<sup>60</sup> Id. at 353-391.

<sup>61</sup> Id. at 499-501.

<sup>62</sup> Id. at 500.

<sup>63</sup> Id. at 505-513.

<sup>64</sup> Id. at 13.

<sup>65</sup> Id. at 14.

<sup>66</sup> Id. at 7-12.

<sup>67</sup> Id. at 16.

<sup>68</sup> Id.

*The amendment of the Petition should be allowed in the interest of justice.*

At the outset, the Court notes that Batangas City erroneously referred to the Joint Decision issued by the CA Fourth Division in the JG Summit and First Gas appeals as the subject of this Petition, instead of the Decision issued by the CA Tenth Division resolving the PSPC Appeal. Batangas City sought to correct this error in its Reply, thus:

1. After diligent and careful review [of] the Petition for Review submitted by the undersigned, it was found out that there was an error which was inadvertently committed in the first paragraph of the fifth (5<sup>th</sup>) page of the Petition;

2. The first paragraph on page 5 of the Petition for Review on Certiorari x x x;

x x x x

Should be amended to appear as:

“On June 13, 2007, herein Petitioner City Government of Batangas received the decision of the Regional Trial Court (RTC), Branch 84 of Batangas City ruling in favor of Respondents, [PSPC] and Intervenor [SPEX] x x x. Petitioner filed its Notice of Appeal x x x on 26 July 2007. The case was elevated to the Court of Appeals and the Tenth Division rendered the 25 May 2010 favoring [PSPC] and SPEX x x x. The City Government of Batangas filed a Motion for Reconsideration x x x. The motion was denied by the Tenth Division of the Court of Appeals in its resolution dated 30 December 2010 x x x. Hence, now this Petition.”<sup>69</sup> (Emphasis omitted)

Considering the nature of the issues involved in the present Petition, and the lack of any evidence showing that Batangas City’s error resulted from anything more than inadvertence, the Court resolves to permit the amendment of the Petition in the interest of substantial justice.

*The Assailed Ordinance is void for being ultra vires, for being contrary to existing law, and for lack of evidence showing the existence of factual basis for its enactment.*

The requisites for a valid ordinance are well established. Time and again, the Court has ruled that in order for an ordinance to be valid, it must not only be within the corporate powers of the concerned LGU to enact, but must also be passed in accordance with the procedure prescribed by law. Moreover, substantively, the ordinance (i) must not contravene the

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<sup>69</sup> Id. at 505-506.

Constitution or any statute; (ii) must not be unfair or oppressive; (iii) must not be partial or discriminatory; (iv) must not prohibit, but may regulate trade; (v) must be general and consistent with public policy; and (vi) must not be unreasonable.<sup>70</sup>

Batangas City claims that the enactment of the Assailed Ordinance constitutes a valid exercise of its police power. This claim is erroneous.

Police power is the power to prescribe regulations to promote the health, morals, peace, education, good order, safety, and general welfare of the people.<sup>71</sup> As an inherent attribute of sovereignty, police power primarily rests with the State. In furtherance of the State's policy to foster genuine and meaningful local autonomy, the national legislature delegated the exercise of police power to local government units (LGUs) as agents of the State.<sup>72</sup> Such delegation can be found in Section 16<sup>73</sup> of the LGC, which embodies the general welfare clause.<sup>74</sup>

Since LGUs exercise delegated police power as agents of the State, it is incumbent upon them to act in conformity to the will of their principal, the State.<sup>75</sup> Necessarily, therefore, ordinances enacted pursuant to the general welfare clause may not subvert the State's will by contradicting national statutes. Thus, in *Batangas CATV, Inc. v. Court of Appeals*,<sup>76</sup> the Court struck down an ordinance enacted by Batangas City which granted the *Sangguniang Panlungsod* the power to fix subscriber rates charged by CATV providers operating within the former's territory, as this directly violated a general law which grants such power exclusively to the National Telecommunications Commission. In so ruling, the Court stressed that municipalities are precluded from regulating conduct already covered by a statute involving the same subject matter, hence:

In *De la Cruz vs. Paraz*, we laid the general rule "that ordinances passed by virtue of the implied power found in the general welfare clause must be reasonable, consonant with the general powers and purposes of the corporation, and *not inconsistent with the laws or policy of the State.*"

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<sup>70</sup> *Social Justice Society (SJS) v. Atienza, Jr.*, 568 Phil. 658, 699-700 (2008).

<sup>71</sup> *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 968 (2000).

<sup>72</sup> *Id.* at 968-969.

<sup>73</sup> Section 16 of the LGC provides:

SEC. 16. *General Welfare.* - Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

<sup>74</sup> *Supra* note 71, at 969.

<sup>75</sup> See *Batangas CATV, Inc. v. Court of Appeals*, *supra* note 2, at 562.

<sup>76</sup> See *id.* at 562-563.

**In this regard, it is appropriate to stress that where the state legislature has made provision for the regulation of conduct, it has manifested its intention that the subject matter shall be fully covered by the statute, and that a municipality, under its general powers, cannot regulate the same conduct. In *Keller vs. State*, it was held that: “Where there is no express power in the charter of a municipality authorizing it to adopt ordinances regulating certain matters which are specifically covered by a general statute, a municipal ordinance, insofar as it attempts to regulate the subject which is completely covered by a general statute of the legislature, may be rendered invalid. x x x Where the subject is of statewide concern, and the legislature has appropriated the field and declared the rule, its declaration is binding throughout the State.” A reason advanced for this view is that such ordinances are in excess of the powers granted to the municipal corporation.**

Since E.O. No. 205, a general law, mandates that the regulation of CATV operations shall be exercised by the NTC, an LGU cannot enact an ordinance or approve a resolution in violation of the said law.

It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe the spirit of a state law or repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law. x x x<sup>77</sup> (Emphasis and underscoring supplied)

In this Petition, the Court is called upon to determine whether the control and regulation of the use of water may be made subject of a city ordinance under the regime of the Water Code — a national statute governing the same subject matter.

The Water Code governs the ownership, appropriation, utilization, exploitation, development, conservation and protection of water resources.<sup>78</sup> Under Article 3 thereof, water resources are placed under the control and regulation of the government through the National Water Resources Council, now the NWRB.<sup>79</sup> In turn, the privilege to appropriate and use water is one which is exclusively granted and regulated by the State through water permits issued by the NWRB.<sup>80</sup> Once granted, these water permits continue to be valid save only for reasons spelled out under the Water Code itself.<sup>81</sup>

<sup>77</sup> Id. at 563-564.

<sup>78</sup> WATER CODE, Article 2 (c).

<sup>79</sup> On July 22, 1987, the National Water Resources Council was renamed and reorganized as the NWRB by virtue of Executive Order No. 124-A.

<sup>80</sup> WATER CODE, Article 13.

<sup>81</sup> The relevant provisions of the Water Code governing the grant, suspension, modification, cancellation and revocation of water permits provide:

Article 28. Water permits shall continue to be valid as long as water is beneficially used; however, it maybe suspended on the grounds of non-compliance with approved plans and specifications or schedules of water distribution; use of water for a purpose other than that for which it

Conversely, the power to modify, suspend, cancel or revoke water permits already issued also rests with NWRB.<sup>82</sup>

On the other hand, the avowed purpose of the Assailed Ordinance, as stated in its whereas clauses, is the protection of local aquifers for the benefit of the inhabitants of Batangas City.<sup>83</sup> Accordingly, the Assailed Ordinance mandates all heavy industries operating along Batangas Bay to use seawater in the operation of their respective facilities, and install desalination plants for this purpose. Failure to comply with this mandatory requirement would have the effect of precluding continuous operation, and exposing non-compliant parties to penal and administrative sanctions.<sup>84</sup>

There is no doubt, therefore, that the Assailed Ordinance effectively contravenes the provisions of the Water Code as it arrogates unto Batangas City the power to control and regulate the use of ground water which, by virtue of the provisions of the Water Code, pertains solely to the NWRB. By enacting the Assailed Ordinance, Batangas City acted in excess of the powers granted to it as an LGU, rendering the Assailed Ordinance *ultra vires*.

Being *ultra vires*, the Assailed Ordinance, in its entirety, is null and void. Thus, it becomes unnecessary to still determine if it complies with the other substantive requirements for a valid ordinance — *i.e.*, that the ordinance is fair and reasonable.

In any case, it bears emphasizing that the measure of the substantive validity of an ordinance is the underlying factual basis for which it was enacted. Hence, without factual basis, an ordinance will necessarily fail the substantive test for validity.

Batangas City's failure to prove the existence of factual basis to justify the enactment of the Assailed Ordinance had already been passed

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was granted; non-payment of water charges; wastage; failure to keep records of water diversion, when required; and violation of any term or condition of any permit or of rules and regulations promulgated by the [NWRB].

x x x x

Article 29. Water permits may be revoked after due notice and hearing on grounds of non-use; gross violation of the conditions imposed in the permit; unauthorized sale of water; willful failure or refusal to comply with rules and regulations or any lawful order; pollution, public nuisance or acts detrimental to public health and safety; when the appropriator is found to be disqualified under the law to exploit and develop natural resources of the Philippines; when, in the case of irrigation, the land is converted to non-agricultural purposes; and other similar grounds.

Article 30. **All water permits are subject to modification or cancellation by the [NWRB], after due notice and hearing**, in favor of a project of greater beneficial use or for multi-purpose development, and a water permittee who suffers thereby shall be duly compensated by the entity or person in whose favor the cancellation was made. (Emphasis supplied)

<sup>82</sup> WATER CODE, Article 30.

<sup>83</sup> *Rollo*, p. 24.

<sup>84</sup> *Id.* at 25-26.

upon by the lower courts. The Court quotes, with approval, the Joint Decision of the CA Fourth Division:

To prohibit an act or to compel something to be done, there must be a shown reason for the same. The purpose must also be cogent to the means adopted by the law to attain it. In this case, as seen in the “whereas clause,” the purpose of the ordinance is to protect the environment and prevent ecological imbalance, especially the drying up of the aquifers of Batangas City. In effect, the drying up of aquifers is being blamed on the establishments and industries such as petitioners-appellees here. It would have been acceptable had there been a specific study or findings that the local government conducted (sic) and not just its reliance on the complaints of some constituents who merely made its conclusion that the drying up of wells or its salination was due to the “heavy industries” use of groundwater.

In addition, if appellants were convinced that those industries adversely affect the environment and specifically the water resource in Batangas City, there would be no exemptions, as provided in Section 5 of the Ordinance, as it would negate the purpose of the law.

It thus becomes apparent that the ordinance was come up with in an arbitrary manner, if not based purely on emotive or flawed premises. There was no scientific standard or any acceptable standard at all that the ordinance was based on. x x x<sup>85</sup>

While the Joint Decision resolves the JG Summit and First Gas appeals, these cases, pertain to the same appeal filed by Batangas City and the *Sangguniang Panlungsod* from the Decision of the RTC nullifying the Assailed Ordinance. As aptly put by the CA in the present case:

The factual antecedents and legal issues in the present CA-G.R. CV No. 90373 are identical to those of CA-G.R. CV Nos. 90324 and 90365. **The assignment of errors in the present appeal are but a restatement of the errors raised in the two consolidated appeals cases, which errors have already been exhaustively passed upon by the Court’s Fourth Division in its Joint Decision dated May 28, 2009, weighing pieces of evidence that are now the very same pieces of evidence presented for consideration in this appeal.** x x x<sup>86</sup> (Emphasis supplied)

This Court, not being a trier of facts, accords the highest degree of respect to the findings of fact of the trial court, especially where, as here, they have been affirmed by the CA; accordingly, these findings will not be disturbed. To be sure, such findings are binding and conclusive upon this Court,<sup>87</sup> and it is not the Court’s function in a petition for review on *certiorari* to examine, evaluate or weigh anew the probative value of the evidence presented before the trial court.<sup>88</sup> While there are recognized exceptions to this rule, the Court finds that none is present in this case.

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<sup>85</sup> Id. at 51-52.

<sup>86</sup> Id. at 326.

<sup>87</sup> *Bulos, Jr. v. Yasuma*, 554 Phil. 591, 601 (2007).

<sup>88</sup> Id.

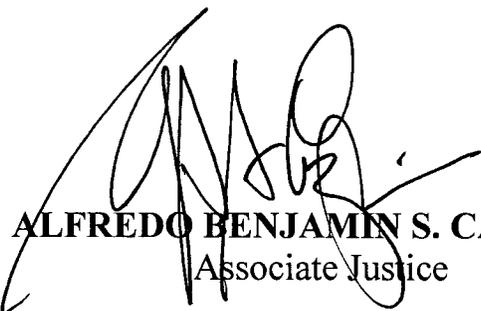
Consequently, since it has been established that Batangas City did not have factual basis to justify the purpose of the Assailed Ordinance, Batangas City cannot invoke the presumption of validity. As held in *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*,<sup>89</sup> which Batangas City itself cites in its Petition, **the presumption of validity ascribed to an ordinance prevails only in the absence of some factual foundation of record sufficient to overthrow the assailed issuance.**<sup>90</sup> In this case, the presumption of validity ascribed to the Assailed Ordinance had been overturned by documentary and testimonial evidence showing that no substantial diminution in the supply of ground water in the Tabangao-Malitam watershed had occurred in the last three (3) decades, and that no threat of depletion of ground water resources in said watershed existed.<sup>91</sup>

#### *Final Note*

While the Assailed Ordinance has been struck down as invalid, the pronouncements hereunder should not be misconstrued by heavy industries to be *carte blanche* to abuse their respective water rights at the expense of the health and safety of the inhabitants of Batangas City, the environment within which these inhabitants live, and the resources upon which these inhabitants rely. The Court recognizes fresh ground water as an invaluable natural resource, and deems it necessary to emphasize that Batangas City is not precluded from exercising its right to protect its inhabitants from injurious effects which may result from the misuse of natural water resources within its territorial jurisdiction, should these effects later arise, *provided* that such exercise is done within the framework of applicable national law, particularly, the Water Code.

**WHEREFORE**, premises considered, the petition for review on *certiorari* is **DENIED**. The Decision dated May 25, 2010 and Resolution dated December 30, 2010 of the Court of Appeals in CA-G.R. CV No. 90373 are **AFFIRMED**.

**SO ORDERED.**

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

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<sup>89</sup> 127 Phil. 306 (1967).

<sup>90</sup> Id. at 315.

<sup>91</sup> *Rollo*, p. 73.

WE CONCUR:

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

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

  
**MARIANO C. DEL CASTILLO**  
 Associate Justice

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

**CERTIFICATION**

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

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

