



Mis-DC Batt
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Deputy Division Clerk of Court
Third Division

**Republic of the Philippines
Supreme Court
Manila**

DEC 28 2017

THIRD DIVISION

REPUBLIC OF THE PHILIPPINES
represented by the
ENVIRONMENTAL
MANAGEMENT BUREAU,
REGION VII, and NOEL C.
EMPLEO, Regional Director,
Petitioners,

G.R. No. 189290

PRESENT:

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO,* JJ.

-versus-

O.G. HOLDINGS CORPORATION,
represented by its Chairman, **MR.**
FREDERICK L. ONG,
Respondent.

PROMULGATED:

November 29, 2017
Mis-DC Batt

X-----X

DECISION

MARTIRES, J.

At the urging of the Republic, for review¹ under Rule 45 of the Rules of Court are the Decision² and the Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 02530, dated 11 June 2009 and 10 August 2009, respectively, whereby the appellate court nullified and set aside the Orders dated 6 July 2006⁴ and 7 February 2007,⁵ of petitioner, the Environmental Management Bureau, Region 7 (*EMB-Region 7*), Department of Environment and Natural Resources (*DENR*), in EIA Cases Nos. VII-2006-06-019 and VII-2007-02-010.⁶ With the orders, petitioner suspended the

* On leave.
¹ Petition for Review on Certiorari, *Rollo*, pp. 19-46.
² *Rollo*, pp. 50- 65.
³ Id. at pp. 68- 70.
⁴ Id. at pp. 71- 73.
⁵ Id. at pp. 74-76.
⁶ Id. at pp. 71- 76.

06-019 and VII-2007-02-010.⁶ With the orders, petitioner suspended the Environmental Compliance Certificate (*ECC*) it had previously issued to the beach resort project of respondent O.G. Holdings Corporation (*O.G. Holdings*).⁷ The suspension was triggered by respondent's violation of Presidential Decree (*P.D.*) No. 1586, or the Philippine Environmental Impact Statement System, having failed to comply with a condition set forth in the certificate. With the suspension, petitioner effectively prohibited the operations and further development of the beach resort. The CA ruled that this was in grave abuse of discretion.

We required a comment⁸ and a reply.⁹ The parties complied.¹⁰

The Facts

The records narrate:

Respondent's beach resort project, the Panglao Island Nature Resort, comprising 3.0709 hectares,¹¹ is located at Barangay Bingag, Municipality of Dauis, Panglao Island, Bohol Province.¹² In the resort are native-style cottages, a hotel, a clubhouse, a man-made islet with a lifeguard post, a shed, and benches. It boasts of amenities such as a business center, function rooms, sports and recreational facilities, swimming pools, a spa, wildlife sanctuaries, a marina, a full-service dive shop and novelty shops, and a beachfront bar and restaurant.¹³

On 26 July 2002, EMB-Region 7 issued an Environmental Compliance Certificate (*ECC*) to the Panglao Island Nature Resort Corporation for the beach resort project owned and operated by O.G. Holdings, with Frederick L. Ong as President (*Ong*).¹⁴ The *ECC* reads:

ENVIRONMENTAL COMPLIANCE CERTIFICATE

(07 02 07-26 0226 402)

The **ENVIRONMENTAL MANAGEMENT BUREAU (EMB)** of the **Department of Environment and Natural Resources (DENR), Region VII** hereby grants this **ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC)** to **PANGLAO ISLAND NATURE RESORT CORPORATION** for its **Beach Resort project** located in Barangay Bingag, Dauis, Panglao Island, Bohol after complying with the



⁶ Id. at 71- 76.

⁷ Id. at 84-89.

⁸ Id. at 235, Resolution dated 23 November 2009.

⁹ Id. at 282.

¹⁰ Id. at 236-253 (Comment); Id. at pp. 290-305 (Reply).

¹¹ Id. at 83.

¹² Id. at 257.

¹³ Id. at 83-84.

¹⁴ Id. at 257-258.

Environmental Impact Assessment (EIA) requirements pursuant to P.D. 1586.

This **Certificate** is being issued subject to the following conditions:

1. That this **Certificate** is issued as one of the requirements for any permit issuances by other concerned agencies and is valid only for the beach resort project which covers a land area of three point zero seven zero nine (3.0709) hectares covered by OCT No. 75531 consisting of the following facilities/amenities;

- a. Thirteen (13) units bungalows;
- b. Seven (7) units duplex cottage;
- c. Three (3) units quadruplex cottages;
- d. Swimming pool;
- e. Lobby and Restaurant;
- f. Library and Function Room;
- g. Gazebo and Fitness Gym; and
- h. Two-hundred (200) square meter man-made island in the foreshore area.

2. That it shall be the responsibility of the proponent to secure the necessary permits/clearances and coordinate with concerned agencies to include, but not limited to the following:

- 2.1. Department of Health (DOH)-Region 7 and/or Municipal Health Office on provision of sewage treatment facilities and Sanitary Permits;
- 2.2. DENR-PENRO/CENRO on Foreshore Lease/Other Lawful Purposes Permit in case of any development in the foreshore area;
- 2.3. Municipal Engineer's Office on Drainage Clearance taking into consideration the provision of catch basins to prevent siltation/turbidity of seawater;
- 2.4. Municipal Building Official on Structural Stability and Building Permit;
- 2.5. Fisheries and Aquatic Resources Management Council Clearance, for development on-shore;
- 2.6. Municipal Government on Solid Waste Management, which shall effectively implement on solid waste management scheme, segregation and recycling of solid waste prior to disposal in a manner that does not create nuisance or land pollution.

That it shall be the responsibility of the respective government agencies to monitor the herein stated permits/clearances;

3. That the project proponent shall be held responsible [for] damages incurred to life, property, and environment brought about by the implementation of the project. Aggrieved parties shall be justly and timely compensated. Likewise, the proponent shall set aside One Hundred Thousand Pesos (P 100,000.00) representing as Environmental Guarantee Fund (EGF) for any environmental impacts arising from the project implementation. This shall be maintained all throughout the duration of the project;



4. That buffer strip of appropriate tree species either in the form of tree parks or landscaping should be planted on any applicable areas and shall be maintained all throughout the duration of the project;
5. That overflow septic tanks from cottages should be pumped to the Centralized Sewage Treatment Facility and effluent should conform with the standards set forth in the Implementing Rules and Regulations of P.D. 984;
6. That a marine study should be conducted within the primary impact area and a report should be submitted to this Office thirty (30) days from receipt of this Certificate;
7. That information signs prohibiting coral collection should be posted on strategic locations of the project area;
8. That any expansion from the existing approved operation shall be subject to [other] EIA requirements;
9. That the project shall exit the coverage of EIS System once all the conditions have been complied with, and henceforth all regulatory activities shall be conducted by those regulatory agencies concerned, to include but not limited to those that are indicated in condition No. 2 of this Certificate. EMB, DENR-Region 7 shall be furnished a copy of the Monitoring Inspection Report of the said agencies;
10. That an on-the-spot monitoring may be conducted by DENR-PENRO concerned and/or EMB-Region VII anytime in coordination with concerned groups;
11. That transfer of ownership of this project carries the same conditions as contained in this Certification for which written notification should be made by herein grantee to this Office within fifteen (15) days from such transfer; and

THIS ECC SHOULD NOT BE MISCONSTRUED AS A PERMIT, RATHER A SET OF CONDITIONALITIES WHICH SHOULD BE FOLLOWED BY THE PROJECT PROPONENT IN ALL STAGES OF THE PROJECT IMPLEMENTATION IN ORDER TO MITIGATE POTENTIAL ADVERSE IMPACTS [ON] THE ENVIRONMENT.

Non-Compliance [with] any of the above stipulations will be sufficient cause for the suspension or cancellation of this **Certificate** and/or imposition of a fine in an amount not to exceed Fifty Thousand Pesos (P50,000.00) for every violation thereof, at the discretion of this **Office** (Section 9 of P.D. 1586).

Given this 26th day of July 2002.

Approved by:

AUGUSTUS L. MOMONGAN
Regional Executive Director



Recommending Approval:

BIENVENIDO L. LIPAYON
Regional Director

Conformé:

FREDERICK L. ONG
President and General Manager

Thereafter, O.G. Holdings proceeded to develop and operate the project, incurring an unspecified “millions of pesos” in the process.¹⁵

On 3 December 2003, EMB-Region 7 monitored the project for compliance. It found three violations of the ECC: (a) non-compliance with its Conditions Nos. 2.2, 3, and 6, or the requirements that the project obtain a foreshore lease, (b) that it establish an Environmental Guarantee Fund, and (c) that it submit a marine study on the project’s primary impact area.¹⁶ Consequently, the bureau issued a Notice of Violation, dated 15 March 2004.¹⁷

The following month, on 16 April 2004, EMB-Region 7 again conducted a compliance monitoring, and found that ECC again failed to comply with Conditions Nos. 2.2 and 6.¹⁸ On 13 May 2004, it issued a Notice of Violation¹⁹ to respondent Ong, President and General Manager of Panglao Island Nature Resort Corporation²⁰ and Chairperson of O.G. Holdings,²¹ with an invitation to a technical conference on **16 June 2004** at the bureau’s office in Mandaue City.²² EMB-Region 7 Regional Director Bienvenido L. Lipayon signed the notice.²³

At the conference, O.G. Holdings disclosed the difficulties it was having in securing a foreshore lease for the beach resort project. Particularly, it stated that the Municipality of Daus could not give its favorable endorsement for the lease, as an existing ordinance, Municipal Ordinance No. 03-1991,²⁴ prohibited any development on the municipal shorelines. Nonetheless, it made a commitment that it would file “appropriate documents”²⁵ on the foreshore lease and marine study.



¹⁵ Id. at 86.

¹⁶ Id. at 74.

¹⁷ Id.

¹⁸ Id..

¹⁹ Id. at 259.

²⁰ Id. at 258.

²¹ Id. at 254.

²² Id. at 259.

²³ Id.

²⁴ Id. at 196 and 198.

²⁵ Id. at 74.

On 1 March 2005, O.G. Holdings submitted a marine study, finally complying with ECC Condition No. 6.²⁶

The following day, 2 March 2005, EMB-Region 7 held yet another monitoring and noted the continuing violation of ECC Condition No. 2.2, viz, the securing of a foreshore lease.²⁷ At this point, it bears mentioning that the bureau had also received a complaint from a local fisherfolk organization, the Bingag Little Fishermen's Organization, that O.G. Holdings was cordoning the shoreline at the project site, affecting the right of way of the fisherfolk.²⁸

On 28 April 2005, EMB-Region 7 again sent O.G. Holdings a Notice of Violation with respect to ECC Condition No. 2.2.²⁹ O.G. Holdings replied, in a letter sent on 10 November 2005, that compliance with the condition was legally impossible. It blamed the local government unit for allegedly failing to act³⁰ on its request that the Panglao Island Nature Resort Corporation be given a favorable endorsement for a foreshore lease. It informed EMB-Region 7 that it had filed, instead, an application with the Philippine Reclamation Authority (*PRA*) for the special registration of a man-made island located within the project. O.G. Holdings prayed that the bureau consider *the application* with the PRA as substantial compliance with ECC Condition No. 2.2. In support of this prayer, it submitted a letter,³¹ dated 25 May 2005, issued by PRA General Manager and Chief Executive Officer Teodorico C. Taguinod acknowledging receipt of said application for the registration of O.G. Holdings' man-made island, and advising that PRA's requirements must be met.³²

On 4 July 2006, EMB-Region 7's Environmental Impact Assessment (*EIA*) Division recommended the suspension of the ECC issued to the Panglao Island Nature Resort Corporation. Incidentally, on the following day, the Department of Tourism issued a Class "AA" accreditation to the beach resort.³³

The Orders of the Environmental Management Bureau

Acting on EIA Division's recommendation, EMB-Region 7 suspended the subject ECC in an order,³⁴ dated 6 July 2006, and signed by petitioner 

²⁶ Id. at 71.

²⁷ Id.

²⁸ Id.

²⁹ Id. at 72.

³⁰ Id. at 75.

³¹ Id. at 270.

³² Id. at 72.

³³ Id. at 255, Per Accreditation No. R-AA-169-2006.

³⁴ Id. at 71-73, Docketed as EIA Case No. VII-2006-06-019.

Alan C. Arranguez (*Arranguez*), Officer-in-Charge, Office of the Regional Director, EMB-Region 7, which reads:

WHEREFORE, viewed from the light of the foregoing and pursuant to Section 6.0 (b) of DAO 96-37, the **Environmental Compliance Certificate (ECC 07 01 04-03 0054 402)** issued to Panglao Island Nature Resort is **SUSPENDED** for failure of the proponent to submit foreshore lease agreement and/or permit from the Philippine Reclamation Authority for the foreshore area of the project.

The proponent is directed to **CEASE AND DESIST** from undertaking project expansion and other developments within the project area.

The Chief of the Environmental Impact Assessment Division or his duly authorized representative is directed to implement this Order within seventy-two (72) hours and to submit report within forty-eight (48) hours from its execution stating the proceedings taken thereon.

SO ORDERED.

(Sgd.) **ALAN C. ARRANGUEZ**
OIC, Regional Director

In a letter dated 14 July 2006, O.G. Holdings moved for reconsideration. It pleaded that the suspension of the ECC would hinder its application with the PRA, as it required an existing ECC for the special registration of the man-made island.³⁵

The plea prompted the Bohol staff of EMB-Region 7 to visit the project site on 30 August 2006. The staff reported that there were no reclamation activities at the site. O.G. Holdings was nevertheless advised "not to take any activity over the area."³⁶

However, local fisherfolk reported to the bureau that a guardhouse was being built at the resort, and that its foundation was already finished. The fisherfolk also reported that O.G. Holdings was cordoning seawater at the project site. On 18 January 2007, EMB-Region 7 investigated these reports, during which O.G. Holdings manifested that it would no longer proceed with the construction of the guardhouse but that its cordoning activities would continue in order to maintain the security of resort guests, following instructions from the Department of Tourism.³⁷



³⁵ Id. at 90.

³⁶ Id. at 75.

³⁷ Id.

On 7 February 2007, again, via Officer-in-Charge Arranguez, EMB-Region 7 issued the second suspensive order.³⁸ This time, the order included as among the beach resort project's violations the construction of a guardhouse within the foreshore area. The order reads, in part:

We painstakingly reviewed the records as well as laws, rules and regulations in order to judiciously resolve the case. As per record, the proponent has not secured yet a tenorial instrument from the DENR nor has a permit from the Philippine Reclamation Authority (PRA). To date, proponent has failed to submit necessary permit/clearance relevant to the foreshore area. From the date of the issuance of the Environmental Compliance Certificate (ECC) until today, a considerable length of time of more than two (2) years had lapsed for the proponent to process and secure such permit. The proponent has made a written commitment several times to comply [with] the same but it was not rectified and complied [with]. The act of continuous violation can be interpreted as seeming misrepresentation or deliberate intent to thwart the rules. The same should be taken against the proponent. The provision of Section 6.0 (b) of DENR Administrative Order No. 96-37 otherwise known as the implementing rules of EIS System Act punishes violation of ECC conditions. Considering the infraction of the proponent through the years, it would be fitting to impose a stiffer penalty. Further, the construction of the guardhouse and the laying of its foundation within the foreshore area is an apparent violation of the previous order of this Office and DENR Administrative Order No. 2003-30. Finally, in view of the suspension of the Environmental Compliance Certificate (ECC), the project is technically operating without an ECC. Under existing policy, a project without an ECC is prohibited from further implementing /operating the same. However, the Office in the spirit of due process, gives respondent proponent the opportunity to submit the required tenorial instrument over the foreshore area in compliance [with] the ECC condition, and other pertinent documents which will be made as the basis for the imposition of appropriate penalty including the cessation of project operation.

WHEREFORE, viewed from the light of the foregoing, this Office orders respondent proponent to submit the required tenorial instrument for the foreshore area and other documents relevant thereto within seventy-two (72) hours from receipt hereof, subject to the evaluation and review of this Office. If found compliant, the Order suspending the efficacy of the ECC will be lifted, however, if the documents will be found insufficient, the **CEASE AND DESIST ORDER (CDO)** will be implemented immediately by this Office.

The Chief of the Environmental Impact Assessment Division or his duly authorized representative is directed to implement this Order within seventy two (72) hours and to submit report within forty eight (48) hours from its execution stating the proceedings taken thereon.

SO ORDERED.

(Sgd.) ALAN C. ARRANGUEZ
OIC, Regional Director



³⁸ Id. at 74-76, Docketed as VII-2007-02-010.

In fine, the order stated that unless O.G. Holdings submit a “tenorial instrument for the foreshore area,” e.g., a foreshore lease agreement, within the specified seventy-two hours, the ECC for the Panglao Island Nature Resort Corporation would be suspended immediately, with the suspension resulting in the disallowance of the operations and further development of the resort.

O.G. Holdings no longer moved for the reconsideration of this second order.

The Petition for Certiorari before the CA

Instead, it filed a special civil action under Rule 65 of the Rules of Court before the CA. The petition for certiorari,³⁹ dated 22 February 2007, and docketed as CA-G.R. CEB SP No. 02530,⁴⁰ named as respondents petitioners EMB-Region 7 and Officer-in-Charge Arranguez, with the latter impleaded in his official and personal capacities. The petition for certiorari prayed for the annulment of the 6 July 2006 and 7 February 2007 orders and claimed an “extreme urgency” in the issuance of a temporary restraining order and writ of preliminary injunction⁴¹ to restrain the implementation of the orders. The petition also asked that “a condition”⁴² in the subject ECC be annulled and/or modified.

At the outset, the petition for certiorari insisted that certiorari was the proper remedy against the suspension of the project’s ECC. Appealing the suspensive orders to the Secretary of the DENR, it argued, would not stay the subject suspension. The petition claimed that four exceptions existed to prevent the application of the principle of exhaustion of administrative remedies, to wit: (1) to require exhaustion of administrative remedies would be unreasonable; (2) the rule does not provide a plain, speedy and adequate remedy; (3) there are circumstances indicating the urgency of judicial intervention, as when public interest is involved; and (4) there is irreparable injury. Anent the fourth point, the petition claimed that cancellations of local and foreign guest bookings, as a consequence of the suspension, were harming the economic well-being of O.G. Holdings, its employees, and the Province of Bohol.

To impute grave abuse of discretion on EMB-Region 7 and Arranguez, the petition claimed that they had imposed “an impossible condition [to be complied with] within an impossible seventy two (72) hours.”⁴³ It pointed out that Condition No. 2.2 came into play only when there were construction or development activities within the beach resort

³⁹ Id. at 188-215.

⁴⁰ Id. at 188.

⁴¹ Id. at 209-213.

⁴² Id. at 80.

⁴³ Id. at 76.

project's foreshore area. Thus, the petition now contended that, *first*, the resort's man-made island was the only reason why EMB-Region 7 and Arranguez were insisting on a foreshore lease; and, *second*, the man-made island was not a construction or development activity on the foreshore area, but a reclamation project located "some ninety (90) meters offshore from the resort."⁴⁴ Hence, the petition went on to argue, there was no basis to require a foreshore lease for the man-made island and the entire beach resort project. And even if it were assumed, *arguendo*, that a foreshore lease was required *for the man-made island*, it was illogical and unjust of EMB-Region 7 and Arranguez to have ordered the stoppage of the operations of the *entire* beach resort project considering that its other components were located outside its foreshore area.

The petition went on to claim that O.G. Holdings attempted in good faith to substantially comply with Condition No. 2.2, *viz*, by applying for the special registration, as reclaimed land, of the man-made island. Unfortunately, EMB-Region 7 and Arranguez made the application's approval impossible when they suspended the beach resort project's ECC. The following passage expresses the petition's interesting theory on this score:

In effect, while initially Respondents [EMB-Region 7 and Arranguez] were open to admitting the PRA permit as substitute compliance for the foreshore lease agreement, they (respondents) have nevertheless subsequently made it impossible for Petitioner to secure the same since it has suspended its ECC instead of waiting for the processing and release of the PRA permit. In short, Respondents demand something from Petitioner but at the same time have made it impossible for Petitioner to comply with the same by putting obstacles in every step of the way in Petitioner's effort to comply with its impossible condition.⁴⁵

In fine, the petition for certiorari concluded that EMB-Region 7 and Arranguez acted in grave abuse of discretion amounting to lack of or excess of jurisdiction in suspending the subject ECC.

The Ruling of the CA

The CA found merit in the prayer for the issuance of the extraordinary writ of certiorari. The dispositive portion of the CA decision reads:

WHEREFORE, in light of all the foregoing, the petition is hereby **GRANTED**. The orders dated July 6, 2006 and February 7, 2007 issued by OIC, Regional Director, Alan Arranguez, are hereby **ANNULLED** and **SET ASIDE**. Petitioner is hereby relieved of complying with condition No. 2.2, and in lieu thereof, to submit proof of registration of the



⁴⁴ Id. at 83.

⁴⁵ Id. at 99.

reclaimed off-shore area as soon as it has been granted by the PRA in due course.⁴⁶

The CA agreed with O.G. Holdings that it would be unreasonable to require exhaustion of administrative remedies in the case. It characterized Condition No. 2.2 of the ECC as “presently unattainable”⁴⁷ and the suspension of the ECC as arbitrary.⁴⁸ EMB-Region 7 and Arranguez, the appellate court held, had thus erred in suspending the ECC. Such error was no mere error of judgment, but of jurisdiction, and more so because the suspension also rendered futile O.G. Holdings’ pending application with the PRA.⁴⁹ The CA said: “[P]etitioner [O.G. Holdings] was abruptly robbed of its opportunity to comply therewith within the legal parameters afforded by applicable laws on the matter.”⁵⁰

Interestingly, the appellate court also opined⁵¹ that the required foreshore lease or permit may be dispensed with. There had been a “gross misappreciation of facts,”⁵² the CA said, as the resort’s man-made island was located offshore.⁵³ Thus, there was no need for O.G. Holdings to secure a foreshore lease.⁵⁴ We quote the CA’s discussion on this score, if only so that the decision under review may speak for itself:⁵⁵

Be that as it may, this Court is of the opinion that condition No. 2.2 of the ECC may be dispensed with in view of the fact that the islet for which respondents sought the petitioner to secure a tenurial document, is, as found by Deputy Public Land Inspector Alfredo Galarido, within an **OFFSHORE AREA** and not on **FORESHORE AREA**; hence, for all legal intents, there is no need to secure the required foreshore lease.

The definition of the term “**FORESHORE LAND**” as discussed in the case of Republic vs. CA, et al, is instructive, thus:

The strip of land that lies between the high and low water marks and that is alternately wet and dry according to the flow of the tide.” [Sic] (Words and Phrases, “Foreshore”)

“A strip of land margining a body of water (as a lake or stream); the part of a seashore between the low-water line usually at the seaward margins of a low-tide terrace and the upper limit of wave wash at high tide usually marked by a beach scarp or berm” (Webster’s Third New International Dictionary.)”



⁴⁶ Id. at 64.

⁴⁷ Id. at 58.

⁴⁸ Id. at 62.

⁴⁹ Id. at 59.

⁵⁰ Id.

⁵¹ Id.

⁵² Id. at 63.

⁵³ Id. at 60.

⁵⁴ Id. at 59.

⁵⁵ Id. at 59-60.

A perusal of the records would clearly show that, indeed, the islet or the man-made island is found on the offshore area fronting the resort, as can be clearly seen in the pictures attached to the records. Off-shore as defined in Webster dictionary refers to seaward or at a distance from the shore. [citations omitted]

The appellate court observed that even if it were to be assumed, for the sake of argument, that the man-made island was a foreshore development, securing a lease or permit for the same would still not be possible, given the municipal proscription against such developments. On O.G. Holding's application with the PRA, the CA then declared that such application was made in O.G. Holding's "desire to comply" with Condition No. 2.2; with the PRA application cast in such light, the CA concluded that it was "unjust and inequitable" to insist on a foreshore lease for the beach resort project even *after* its ECC had been suspended. Finally, the CA stressed that millions of pesos had been spent on the Panglao Island Nature Resort.

In the main, the CA ruled that EMB-Region 7 and Arranguez had acted with grave abuse of discretion. EMB-Region 7 moved for reconsideration, but it was denied in a resolution dated 11 August 2009.⁵⁶

The Petition for Review before this Court

The Court is now faced with the present petition for review, filed under Rule 45 of the Rules of Court, imputing errors on the subject ruling, *viz:*⁵⁷

- I. A writ of certiorari will not lie in the absence of grave abuse of discretion.
- II. Factual Issues are not proper in a petition for certiorari.

ISSUE

The issue is whether the appellate court reversibly erred in annulling and setting aside the 6 July 2006 and 7 February 2007 Orders of the Environmental Management Bureau. Said differently, the issue is whether the CA reversibly erred in ruling that EMB-Region 7 and Arranguez had acted in grave abuse of discretion amounting to lack of or excess of jurisdiction in suspending the subject ECC, effectively disallowing the operations and further development of the Panglao Island Nature Resort. Put succinctly, the issue is whether the CA reversibly erred in granting O.G. Holdings' Petition for Certiorari.



⁵⁶ Id. at 29.

⁵⁷ Id. at 30.

THE RULING OF THE COURT

The petition for review is impressed with merit. There are obvious errors in the assailed ruling.

The CA erred in granting O.G. Holdings' petition when there was a failure to move for reconsideration before seeking certiorari.

A motion for reconsideration is an indispensable condition before an aggrieved party can resort to the special civil action for certiorari under Rule 65 of the Rules of Court.⁵⁸ This well-established rule is intended to afford the public respondent an opportunity to correct any actual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case.⁵⁹

O.G. Holdings no longer moved for the reconsideration of the 7 February 2007 order. To assail the order, it instead filed posthaste a petition for certiorari with the appellate court. Petitioners EMB-Region 7 and its then Officer-in-Charge Arranguez were thus deprived of the opportunity to rectify or, at the least, address the errors of jurisdiction that O.G. Holdings imputed against them before the CA.

While there are well-recognized exceptions to the rule,⁶⁰ none is said to be present here. For one thing, O.G. Holdings did not specifically plead any of them in its petition for certiorari. It pleaded before the appellate court that it would be “futile” to move for the reconsideration of the 7 February 2007 order as, allegedly, EMB-Region 7 and Arranguez had “already failed or refused to directly act on [O.G. Holdings’] letter for reconsideration of [the] previous July 6, 2006 Order,…”⁶¹

We are not persuaded, it being speculative. At this point, the petition for certiorari was already fatally defective, and the CA erred in granting it. 

⁵⁸ *Audi AG v. Mejia*, 555 Phil. 348, 353 (2007); cited in *Republic rep. by the Privatization and Management Office v. Pantranco North Express, Inc.*, 682 Phil. 186, 193 (2012).

⁵⁹ *Villena v. Rupisan*, 549 Phil. 146, 158 (2007).

⁶⁰ The exceptions are: (a) where the order is a patent nullity, as where the court a quo has no jurisdiction; (b) where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon by the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were ex parte or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.

⁶¹ *Rollo*, p. 81; Paragraph 6 of the Petition for Certiorari.

The CA erred in granting O.G. Holdings' petition when they had failed to exhaust available administrative remedies before seeking certiorari.

The doctrine of exhaustion of administrative remedies requires that resort must first be made with the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts for review. If a remedy within the administrative machinery is still available, with a procedure pursuant to law for an administrative officer to decide a controversy, a party should first exhaust such remedy before going to court.⁶²

This doctrine closely echoes the reason behind the rule providing that before resort to the special civil action of certiorari is allowed, a motion for reconsideration should first be filed with the public respondent concerned. Exhaustion of administrative remedies is obliged pursuant to comity and convenience which in turn impel courts to shy away from a dispute until the system of administrative redress has been completed and complied with.⁶³ The issues that an administrative agency is authorized to decide should not be summarily taken away from it and submitted to a court without first giving the agency the opportunity to dispose of the issues.⁶⁴

O.G. Holdings failed to abide by this doctrine. Administrative remedies existed against the suspension of the subject ECC, made available via DENR Administrative Order No. 30, Series of 2003 (*A.O. No. 30*), which was prevailing at the time of the suspensive orders. A.O. No. 30 provides:

Section 6. Appeal

Any party aggrieved by the final decision on the ECC/CNC applications may, within 15 days from receipt of such decision, file an appeal on the following grounds:

- a. Grave abuse of discretion on the part of the deciding authority, or
- b. Serious errors in the review findings.

The DENR may adopt alternative conflict/dispute resolution procedures as a means to settle grievances between proponents and aggrieved parties to



⁶² Cf. *Castro v. Gloria*, 415 Phil. 645, 651 (2001); cited in *Estrada et al. v. CA and Bacnotan Cement*, 484 Phil. 730, 739 (2004).

⁶³ Cf. *Paat v. CA*, 334 Phil. 146, 153 (1997); cited in *Estrada et al. v. CA and Bacnotan Cement*, 484 Phil. 730, 739-740 (2004).

⁶⁴ Cf. *Republic v. Lacap*, 546 Phil. 87, 96-97 (2007); cited in *Special People, Inc. Foundation v. Canda et al.*, 701 Phil. 365, 378 (2013).

avert unnecessary legal action. Frivolous appeals shall not be countenanced.

The proponent or any stakeholder may file an appeal to the following:

Deciding Authority	Where to file the appeal
EMB Regional Office Director	Office of the EMB Director
EMB Central Office Director	Office of the DENR Secretary
DENR Secretary	Office of the President

O.G. Holdings thus had the opportunity to file an administrative appeal on the suspension of the beach resort project's ECC, beginning with the Office of the EMB Director. Indeed, the administrative machinery afforded even an appeal to the Office of the President, but O.G. Holdings did not avail of such.

It might be argued that Section 6, in A.O. No. 30 applied only to *final decisions* on applications for the issuance of an ECC or CNC (Certificate of Non-Coverage), and not to the *suspension* of an ECC that had already been issued. However, the 2013 case of *Special People, Inc. Foundation v. Canda, et al.*⁶⁵ addresses this argument. The petitioner therein had applied for a CNC for its water-resource development and utilization project in the Province of Bohol. In 2003, the EMB Regional Director concerned declared the location of the project to be within an environmentally critical area, hence not entitled to the CNC applied for. To assail the EMB Regional Director's ruling, similar to the present case, the petitioner filed a special civil action before the Regional Trial Court, a petition for mandamus. The trial court dismissed the petition, prompting the petitioner's appeal before this Court. We dismissed the appeal for the reason, among others, that petitioner sought certiorari before exhausting all available administrative remedies. In our discussion, we highlighted the general rule on where to appeal the decisions and actions of the EMB Regional Directors:

The records show that the petitioner failed to exhaust the available administrative remedies. At the time RD Lipayon denied the petitioner's application for the CNC, Administrative Order No. 42 dated November 2, 2002 had just vested the authority to grant or deny applications for the ECC in the Director and Regional Directors of the EMB. Notwithstanding the lack of a specific implementing guideline to what office the ruling of the EMB Regional Director was to be appealed, the petitioner could have been easily guided in that regard by the Administrative Code of 1987, which provides that the Director of a line bureau, such as the EMB, shall have supervision and control over all division and other units, including regional offices, under the bureau. Verily, supervision and control include the power to "review, approve, reverse or modify acts and decisions of subordinate officials or units." Accordingly, the petitioner should have appealed the EMB Regional Director's decision to the EMB Director, who exercised supervision and control over the former.⁶⁶ [citations omitted]

⁶⁵ 701 Phil. 365-387 (2013).

⁶⁶ Id. at 378-379.

Certainly, the doctrine of exhaustion of administrative remedies may be disregarded in certain instances;⁶⁷ as has been noted, O.G. Holdings claimed before the appellate court that four exceptions existed in its case to prevent the doctrine from being applied to its petition for certiorari. Yet in the petition for certiorari, we observe that O.G. Holdings failed to discuss, let alone prove, how public interest had any bearing in its case. Neither did it sufficiently prove how the suspension of the subject ECC would have caused irreparable injury. On this score, O.G. Holdings merely alleged that cancelled guest bookings, allegedly due to the suspension of the project's ECC, would harm its economic well-being as well as that of its employees and the Province of Bohol. Indeed, O.G. Holdings did not even present proof that the vaunted cancellations were in fact done; and it failed to describe in monetary terms the alleged losses from said cancellations.

The claims that an administrative appeal of the suspensive orders would not be the plain, speedy, and adequate remedy, and that to require exhaustion of administrative remedies would be unreasonable are closely intertwined with the petition for certiorari's principal claim that EMB-Region 7 and Arranguez had committed grave abuse of discretion.

The CA erred in making factual findings in a certiorari proceeding.

The failure to exhaust administrative remedies in this case partakes of a particular prominence when we consider the factual matters that O.G. Holdings brought before the appellate court on certiorari.

Factual issues are not a proper subject for certiorari, which is limited to the issue of jurisdiction and grave abuse of discretion.⁶⁸ Yet to argue grave abuse of discretion, O.G. Holdings presented the appellate court with factual matters that do not appear, at least on record, to have been shared or even passed upon by EMB Region-7. The following passage from the petition for certiorari is worthy of quote as it speaks for itself.

Petitioner's Resort is located atop a cliff facing the Bohol Strait and Maribojoc Bay, at the foot of such cliff is a very little foreshore area

⁶⁷ 723 Phil. 546, 557 (2013); The exceptions are: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; (11) when there are circumstances indicating the urgency of judicial intervention; (12) when no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) where the issue of non-exhaustion of administrative remedies has been rendered moot.

⁶⁸ *Negros Oriental Electric Cooperative 1 v. the Secretary of the Department of Labor and Employment et al.*, 409 Phil. 767, 777 (2001).

which makes any permanent development in said area not only unsuitable, but also impractical. Besides, Municipal Ordinance No. 03-1991 of the Municipality of Dausi, where the Resort is located, prohibits any foreshore development in the Municipality. For these reasons, Petitioner has never made any development in the foreshore area within the Resort. Since the requirement under Condition No. 2.2 of Petitioner's ECC, that is—to secure a foreshore lease/other lawful purposes permit becomes operative only once Petitioner should make “any development in the foreshore area,” there is obviously no need for Petitioner to comply with said requirement since as stated earlier, Petitioner has never made any permanent development in the foreshore area of its Resort. [underlining provided]⁶⁹

Elsewhere in the petition, O.G. Holdings described the man-made island as an “islet,”⁷⁰ whereas EMB-Region 7 had identified it in the subject ECC as an “island.”⁷¹ O.G. Holdings' claim that it has “never made any development in the foreshore area” also flies in the face of EMB-Region 7's own finding, stated in its 7 February 2007 order, that O.G. Holdings had constructed a guardhouse and had laid its foundation within the foreshore area of the resort.⁷²

Yet, following O.G. Holdings' lead, the CA proceeded to declare that the man-made island was an offshore development and hence ruled that the island was *not* to be covered by the foreshore lease requirement set forth in Condition No. 2.2 of the ECC. Admittedly, the CA arrived at the factual premise based on “pictures” and on the alleged finding of a deputy public land inspector. But these are insufficient proof. The CA did not identify the kind of “pictures” these were such that it was persuaded to pronounce, in a certiorari proceeding, a rather technical finding of fact. From which angle were the pictures taken or drawn? Were they cartographic, satellite images, or photographic—of which there are two kinds, digital and non-digital. Perhaps these decisive pictures were artistic representations, rendered by hand in graphite or ink, but the CA did not say. As to its reliance on the alleged factual finding of the deputy land inspector, suffice it to say that even if it were to be assumed, *arguendo*, that the man-made island had indeed been built offshore, as allegedly found by the land inspector in the fulfillment of the unique mandate of his office, such finding should not be taken to mean that the EMB, in the exercise of its own mandate under the Philippine Environmental Impact Statement System, should automatically exempt the *entire* beach resort project from the need for a foreshore lease, as set forth from the ECC it had issued.

The CA erred in this case in making factual findings in a certiorari proceeding—even if O.G. Holdings had alleged a *misappreciation of facts* on the part of EMB-Region 7. As a rule, misapplication of facts and

⁶⁹ *Rollo*, pp. 97 ; Pages 19-21 of the Petition for Certiorari.

⁷⁰ *Id.* at 87.

⁷¹ *Id.* at 257.

⁷² *Id.* at 76.

evidence, and erroneous conclusions based on evidence do not, by the mere fact that errors were committed, rise to the level of grave abuse of discretion.⁷³ Parenthetically, O.G. Holdings should have elevated its factual issues on administrative appeal to the sound discretion of the DENR, the government body entrusted with the regulation of activities coming under its special and technical training and knowledge.⁷⁴ As this Court held in the case of *Acoba v. Court of Appeals*:⁷⁵

In a special civil action for certiorari, under Rule 65 of the 1997 Rules of Civil Procedure, factual issues may not be brought before us. Here petitioner's submission, however, shows that he is raising issues concerning alleged errors and misapprehensions of facts committed by the Court of Appeals. These are not correctible by certiorari under Rule 65. The only question that may be raised in a petition for certiorari is whether the respondent has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. It is not the office of a writ of certiorari to correct errors of fact or law which the lower court may have committed. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as grave abuse of discretion.

The CA erred in finding grave abuse of discretion amounting to lack or excess of jurisdiction in the suspension of the subject ECC.

To recall, the CA found grave abuse of discretion, amounting to lack or excess of jurisdiction, on the part of the EMB-Region 7 and Arranguez based on the theory that their suspension of the subject ECC made O.G. Holdings' PRA application problematic. We recall the theory, as follows:

O.G. Holdings was seeking to comply with Condition No. 2.2. of the beach resort project's ECC, which was issued in 2002. But the compliance, i.e., obtaining a foreshore lease or permit, was "legally impossible" due to an ordinance prohibiting foreshore developments in the municipality. So in 2005, O.G. Holdings filed an application with the PRA for the special registration, as reclaimed land, of its man-made island, and asked that EMB-Region 7 consider the application as substantial compliance with Condition No. 2.2.⁷⁶ But in 2007, after noting O.G. Holdings' continued violation of the ECC (for failure to comply with Condition No.2.2), EMB-Region 7 suspended the ECC, prompting O.G. Holdings to assert, on certiorari before the CA, that the suspension had rendered impossible the approval of their PRA registration. O.G. Holdings emphasized that it needed the registration

⁷³ *People v. Nazareno*, 612 Phil. 753, 769 (2009); cited in *Ysidoro vs. HonLeonardo-de Castro et al.*, 681 Phil. 1, 17 (2012).

⁷⁴ *Quiambao v. Court of Appeals*, 494 Phil. 16, 28 (2005).

⁷⁵ G.R. No. 144459, 3 February 2004

⁷⁶ *Rollo*, p. 75 (see p. 2 of 7 February 2007 Order); *Rollo*, p. 196-197 (see p. 9 of Petition for Certiorari).

for its substantial compliance with Condition No. 2.2, which compliance, in turn, was pivotal in securing or rather, recovering the ECC for its beach resort project. In fine, O.G. Holdings posited that it needed an ECC in order that it may obtain an ECC. From the foregoing, O.G. Holdings theorized that EMB-Region 7 and Arranguez had acted with grave abuse of discretion in suspending the ECC.

That the CA was convinced by this circuitous theory with its obviously flawed premises is remarkable.

The flaws are two-fold. *First*. It is wrong to suppose that *an application* for the registration of a man-made island, as reclaimed land, may substitute for a foreshore lease agreement or permit. This same observation holds true even if the substitution sought involved the *approved* registration. Incidentally, it bears mentioning that O.G. Holdings' application for the man-made island was made under PRA Administrative Order No. 2005-1, or the Rules and Procedures for Special Registration of Unauthorized/Illegal Reclamation Projects.⁷⁷

Certainly, the supposition would be acceptable were there a law or regulation authorizing such a substitution. Unfortunately for O.G. Holdings, it failed to plead such law or regulation in its petition for certiorari.

Second. Even if it were to be assumed, *arguendo*, that such law or regulation existed, it is wrong to suppose that EMB-Region 7 and Arranguez had acted in grave abuse of discretion simply because they had practically rejected O.G. Holdings' proposed substitution for Condition No. 2.2. Indeed, the acceptance of the proposed substitution still lay within the *sound discretion* of EMB-Region 7 and Arranguez.

For these reasons, the CA erred in ruling that EMB-Region 7 and Arranguez had acted in *grave* abuse of discretion. Time and again we have held that a petition for certiorari will prosper only if *grave* abuse of discretion is alleged and proved to exist.⁷⁸ Abuse of discretion is *grave* if it is so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.⁷⁹

Here, we find no grave abuse of discretion on the part of EMB-Region 7 and Arranguez when they suspended the ECC for the Panglao

⁷⁷ Rollo, p. 262.

⁷⁸ *Beluso v. Commission on Elections*, 635 Phil. 436, 443 (2010); cited *Spouses Castillo v. CA (4th Division) et al.*, 680 Phil. 334, 341 (2012).

⁷⁹ *Estrada v. Hon. Desierto*, 487 Phil 169, 182 (2004); citing *Duero v. CA*, 424 Phil 12, 20 (2002); and cited in *Spouses Castillo vs. CA (4th Division) et al.*, 680 Phil. 334, 341 (2012).

Island Nature Resort Corporation. Indeed, we cannot even find mere abuse of discretion in the act, as it came on the heels of a recommendation from the EIA Division and was provoked by O.G. Holdings' continuous non-compliance with Condition No. 2.2 of the ECC. Such noncompliance is a violation that the National Environmental Protection Council, now the Environmental Management Bureau, was authorized to penalize under P.D. No. 1586, *viz*:

Section 9
Penalty for Violation

Any person, corporation or partnership found violating Section 4 of this Decree, or the terms and conditions in the issuance of the Environmental Compliance Certificate, or of the standards, rules and regulations issued by the National Environmental Protection Council pursuant to this Decree shall be punished by the suspension or cancellation of his/its certificate and/or a fine in an amount not to exceed Fifty Thousand Pesos (P50,000.000) for every violation thereof, at the discretion of the National Environmental Protection Council.

With this penalizing law in existence, there is no basis to rule that EMB-Region 7 and Arranguez had acted in excess or lack of jurisdiction. We consider, also, that EMB-Region 7 had issued several notices of violations to O.G. Holdings before it came to the lawful decision to suspend the subject ECC for its noncompliance with a condition. This indicates a considerable effort to resolve the violation judiciously and prudently, without automatically resorting to the penalty provided therefor.

We also consider it strange that O.G. Holdings had found it expedient to pray, via its petition for certiorari with the CA, for the annulment or modification of an unspecified "condition"⁸⁰ in the ECC, implicitly Condition No. 2.2. To include such a prayer in the petition for certiorari was clearly a procedural error on O.G. Holdings' part. A.O. No. 30 provided for an administrative machinery for amending an existing ECC, *viz*:

8.3 Amending an ECC

Requirements for processing ECC amendments shall depend on the nature of the request but shall be focused on the information necessary to assess the environmental impact of such changes.

8.3.1. Requests for minor changes to ECCs such as extension of deadlines for submission of post-ECC requirements shall be decided upon by the endorsing authority.

8.3.2. Requests for major changes to ECCs shall be decided upon by the deciding authority.



⁸⁰ *Rollo*, p. 80.

8.3.3. For ECCs issued pursuant to an IEE or IEE checklist, the processing of the amendment application shall not exceed thirty (30) working days; and for ECCs issued pursuant to an EIS, the processing shall not exceed sixty (60) working days. Provisions on automatic approval related to prescribed timeframes under AO 42 shall also apply for the processing of applications to amend ECCs.

O.G. Holdings should thus have brought its concerns over Condition No. 2.2 to the attention of this administrative machinery, and should have brought it *at the first instance*, or upon the issuance of the ECC in 2002. That it did not do so again indicates the prematurity of its petition for certiorari, and reflects badly on the appellate court, which expressly “opined” in the decision under review that Condition No. 2.2 “may be dispensed with.”⁸¹ On this note, we also observe, that about five years had lapsed from the issuance of the ECC before its suspension. All that time, it appears that the beach resort project had been tolerated to operate without a foreshore lease agreement or permit.

In fine, the CA erred in granting the petition for certiorari despite O.G. Holdings’ unjustified failure to exhaust the available administrative remedies for the suspension of its beach resort project’s ECC.

WHEREFORE, the foregoing premises considered, the Petition of the Republic is **GRANTED**. There being no grave abuse of discretion amounting to excess or lack of jurisdiction on the part of the Environmental Management Bureau, Region 7, and of Alan C. Arranguez, Officer-in-Charge, Office of the Regional Director, EMB-Region 7, in the issuance of the Orders dated 6 July 2006⁸² and 7 February 2007, and in EIA Cases Nos. VII-2006-06-019 and VII-2007-02-010, the Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 02530 are hereby **SET ASIDE**. The 6 July 2006 and 7 February 2007 Orders of the EMB-Region 7 are ordered **REINSTATED**.

SO ORDERED.


SAMUEL R. MARTIRES
Associate Justice

⁸¹ Id. at 59.

⁸² Id. at 71- 73.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


LUCAS P. BERSAMIN
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice

(on leave)
ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

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


MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY

Mis-DCBatt
JOSE DOMINICO C. BATTUNG III
Deputy Division Clerk of Court
Third Division

DEC 20 2017