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G.R. No. 208702 — CYNTHIA A. VILLAR, FORMER MEMBER, HOUSE OF REPRESENTATIVES, LONE DISTRICT OF LAS PIÑAS CITY [supported by THREE HUNDRED FIFTEEN THOUSAND EIGHT HUNDRED FORTY-NINE (315, 849) RESIDENTS OF LAS PIÑAS CITY], *petitioner*, ***versus*** **ALLTECH CONTRACTORS, INC., PHILIPPINE RECLAMATION AUTHORITY, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, ENVIRONMENTAL MANAGEMENT BUREAU, and CITIES OF LAS PIÑAS, PARAÑAQUE, AND BACOOR,** *respondents*.

Promulgated:

May 11, 2021

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CONCURRING OPINION

CAGUIOA, *J.*:

The *ponencia* dismisses the petition for review on *certiorari* (the petition) filed by petitioner Cynthia Villar (petitioner) and affirms the Decision and Resolution of the Court of Appeals (CA), which denied the issuance of the privilege of the writ of *kalikasan* against the implementation of the Las Piñas and Parañaque Coastal Bay Project (proposed project) by respondent Alltech Contractors, Inc. (Alltech).

I concur with the *ponencia*. I write this Opinion to further elucidate on certain points raised by petitioner as well as by my esteemed colleagues.

Preliminary matters on the writ of kalikasan

The writ of *kalikasan* is categorized as a special civil action and conceptualized as an extraordinary remedy. It covers environmental damage of such magnitude that will prejudice the life, health, or property of inhabitants in two or more cities or provinces, and is available against an unlawful act or omission of a public official or employee, or private individual or entity.[1] Thus, to successfully avail of this remedy, the following requisites must be present: (1) there is an actual or threatened violation of the constitutional right to a balanced and healthful ecology; (2) the actual or threatened violation arises from an unlawful act or omission of a public official or employee, or private individual or entity; and (3) the actual or threatened violation involves or will lead to an environmental damage of such magnitude as to prejudice the life, health or property of

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[1] *LNL Archipelago Minerals, Inc. v. Agham Party List*, 784 Phil. 456, 470 (2016).

inhabitants in two or more cities or provinces.[2] Petitioner bears the burden of substantiating these elements.

In the instant case, petitioner harps on the alleged irregularities in the process of the issuance by the Department of Environment and Natural Resources – Environmental Management Bureau (DENR-EMB) of the Environmental Compliance Certificate (ECC) for the proposed project on the basis of an Environmental Performance Report Management Plan (EPRMP). According to petitioner, the correct mode of Environmental Impact Assessment (EIA) for the proposed project is an Environmental Impact Statement (EIS), not an EPRMP.

In this regard, the *ponencia* correctly points out that, as a rule, any of the perceived irregularities in the issuance of the proposed project's ECC should be the subject of an appeal to the proper reviewing authority instead of a petition for writ of *kalikasan.* Indeed, a writ of *kalikasan* cannot be used as a substitute for other remedies that are available to the parties, whether legal, administrative, or political. Mere concern for the environment is not an excuse to invoke this Court's jurisdiction in cases where other remedies are available.[3]

Nevertheless, the Court, in *Paje v. Casiño*[4] (*Paje*), recognized that a party who invokes the writ based on alleged defects or irregularities in the issuance of an ECC may do so, provided that such party not only alleges and proves such defects or irregularities, but also provides a causal link or, at least, a reasonable connection between the defects or irregularities in the issuance of the ECC and the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules of Procedure for Environmental Cases (the Rules). Failing in this regard, the petition should be dismissed outright so that it may be filed before the proper forum in accord with the doctrine of exhaustion of administrative remedies. Such course of action is necessitated by the need to preserve the noble and laudable purposes of the writ against those who seek to abuse it.[5]

According to *Paje*, an example of a defect or an irregularity in the issuance of an ECC which could conceivably warrant the granting of the extraordinary remedy of the writ of *kalikasan* is

> a case where there are serious and substantial misrepresentations or fraud in the application for the ECC, which, if not immediately nullified, would cause actual negative environmental impacts of the magnitude contemplated under the Rules, because the government agencies and LGUs, with the final authority to implement the project, may subsequently

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2 Id.

3 *Abogado v. Department of Environment and Natural Resources*, G.R. No. 246209, September 3, 2019, accessed at <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65756>.

4 752 Phil. 498 (2015).

5 Id. at 542.

> rely on such substantially defective or fraudulent ECC in approving the implementation of the project.[6]

The Court, in *Paje*, also liberally applied this principle and considered the allegation that there was no EIA conducted relative to the amendments of the ECC therein as one that can be reasonably connected to an environmental damage of the magnitude contemplated under the Rules.

The circumstances in *Paje* are absent in the instant case. Petitioner miserably failed to show a causal link, or at least a reasonable connection, between the alleged defects or irregularities in the issuance of the ECC here in question and the actual or threatened violation of the constitutional right to a balanced and healthful ecology of the magnitude contemplated under the Rules. For this reason alone, the petition should have already been dismissed for failure to exhaust administrative remedies. Nevertheless, even if the Court were to disregard this procedural infirmity, the petition should still be denied.

On the proper form of Environmental Impact Assessment for the proposed project

The *ponencia* comprehensively discusses how Alltech submitted the proper form of EIA required for the proposed project. In sum, when the DENR-EMB required an EPRMP for the proposed project, it took into consideration the fact that the application was premised on the 1996 ECC of the discontinued Philippine Estates Authority (PEA) – Amari Coastal Bay Development Corporation (Amari) project. This is in full accord with DENR Administrative Order No. 30, Series of 2003 (DAO 03-30) and its Revised Procedural Manual, which provides that an EPRMP is the required EIA document type "for operating projects with previous ECCs but planning or applying for clearance to modify/expand or *re-start* operations x x x."

Associate Justices Marvic M.V.F. Leonen (Justice Leonen) and Amy C. Lazaro-Javier (Justice Javier) echo the argument of petitioner that the EPRMP is not the proper form of EIA for the proposed project considering that the PEA-Amari project covered by the 1996 ECC was never implemented. They opine that Alltech should have submitted an EIS, which is the applicable EIA form for new environmentally critical projects. This has already been sufficiently rebutted by the *ponencia*. Specifically, the *ponencia* notes that the PEA-Amari project was partially implemented, with 157.84 hectares of the 750-hectare project already reclaimed. As explained by the DENR:

> The subject coastal bay project cannot be simply considered as an entirely new project since the latter logically presuppose[s] the absence of any kind of existing environmental data at all. **In other words, the above**

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[6] Id.

> **engineering and associated works already undertaken in the area generate cumulative environmental data which can serve as basis for the submission of an EPRMP.** x x x
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> The PEA-Amari project had already been implemented and began operations as shown by the earth moving activities undertaken thereon. **The activities conducted under the old ECC have actual cumulative environmental impact and data which can be used as basis in determining the effectiveness of the applicable measures implemented under the old ECC, in relation to the current coastal bay project.**[7] (Emphasis supplied)

Thus, considering that the PEA-Amari project which was covered by the 1996 ECC had already been implemented and the entire area of the proposed project of Alltech falls within the area of the previous ECC issued in favor of Amari, then the EPRMP was the correct form of EIA report applied in acquiring the ECC.

Justice Leonen underscores that the ECC was issued despite the fact that certain issues, concerns, and problems raised in the Comments and Chairman's Report (Report) of the EIA Review Committee (EIARC) were allegedly unresolved. Said Report noted that it was unclear whether the coverage of the ECC issued in favor of Amari would be expanded, and it also acknowledged that prior data may be outdated and would not accurately reflect the expected environmental impact of the proposed project. According to Justice Leonen, these unresolved issues should have placed the CA on guard as to the scope of review undertaken.[8]

With due respect, I disagree. A careful examination of the records would show that these issues were all already resolved. As explained by the DENR:

> x x x The statement in the Chairman's Report that there is an "issue as to whether the application [is] for an expansion coverage of the earlier ECC or for a new ECC" **was only made to point out that this matter was among those considered by the EIARC and the EMB during the initial stages of the EIA process, and which were <u>eventually resolved</u> upon the issuance by the EMB of the EPRMP checklist**. Thus, in the same paragraph, [the EIARC Chair] stated that all the shortcomings and issues are capable of being resolved and that the **EIARC recommends the issuance of the ECC with conditions to be specified**.[9] (Emphasis and underscoring supplied)

On the propriety of an EPRMP, petitioner claims that an EPRMP is stripped of the critical and essential features of a full-fledged EIS such as: the scoping of the technical, environmental, and social issues that must be addressed; gathering of baseline environmental conditions; impact assessment focused on significant environmental impacts taking into account cumulative impacts; proof of consultation with stakeholders; and mandatory

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7 *Rollo*, pp. 2807-2808.
8 Dissenting Opinion of Justice Leonen, pp. 7-8.
9 *Rollo*, p. 2812.

public hearings.[10] According to petitioner, the EPRMP looks backward and is heavily reliant on secondary sets of data which are more than a decade old and thus irrelevant and unresponsive to present realities. Petitioner claims that "[i]nstead of scoping forward for possible important issues based on present and projected realities through an EIS, a diluted and conservative version of the EIA study *via* an EPRMP was submitted and used as basis for the issuance of a new ECC."[11]

Petitioner's attempt to downplay the effectiveness and comprehensiveness of an EPRMP — as compared to an EIS — is erroneous and inaccurate. In *Paje,* the Court explained that the EIA process is a system, not a set of rigid rules and definitions — there is much room for flexibility in the determination and use of the appropriate EIA document type.[12] Hence, the Court ruled that what should be controlling is the guiding principle set in DAO 03-30 in the evaluation of applications for amendments to ECCs, as stated in Section 8.3 thereof: "[r]equirements 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."[13] Consequently, as applied herein, the next logical question is: Did the EPRMP provide the necessary information in order for the DENR-EMB to assess the environmental impact of the proposed project of Alltech? The answer is in the affirmative.

The EIA process conducted by the EMB should not be characterized as an incomplete or limited study by the mere reasoning that an EPRMP was used. Professor Agerico M. De Villa (Prof. De Villa), Chairman of the EIARC, explained that by the submission of an EPRMP, it does not necessarily follow that the EIARC may no longer impose additional requirements for the ECC application. Thus, the EIARC may deem it necessary to add more parameters on top of the old, technical EIS to be incorporated to the EPRMP. Here, according to Prof. De Villa, the EIARC actually imposed a more thorough and in-depth environmental analysis which yielded an even more comprehensive study compared to the previous PEA-Amari EIS, as evidenced by the volume of data incorporated in the final EPRMP, while focusing on the more important issues such as flooding, the critical habitat, and the fisherfolk. In fact, Prof. De Villa testified that the EIARC actually treated the subject ECC application as if it were a technical EIS:

> Q My question: since it was an EPRMP checklist and you just explained to us that it is more simplified as to focus, my question is x x x: how can you say that any review that you would conduct based on this is sufficient in support [of] the issuance of an ECC by the review committee?
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> A One, **if you are using an EPRMP, it does not necessarily follow that you cannot add requirements to it**, except for the

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[10] Id. at 90-91.
[11] Id. at 91.
[12] *Paje v. Casiño,* supra note 4, at 611-612.
[13] Id. at 612. Emphasis supplied.

> requirement of social impact assessment. In other words, **if the review committee deems it necessary to add more parameters coming from the old, technical EIS to be added to the EPRMP, we can do that, which we have done**. In fact, **in this case[,] because we have done that, if you will notice the EPRMP is much more thicker than the original EIS and there is no limit as to what we will require** so long as we do not require public consultation or public hearing, so **in our case so far as we are concerned, being the chair, I actually treated it as if it were a technical EIS**.
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> Q Why do you say so?
> A (1) because we were able to add considerations that would have been part only of the technical EIS but now we required them of the EPRMP; (2) I have been able to convince the proponent x x x to have at least public consultation x x x.
>
> Q You mentioned you took into consideration [matters that are] appropriate only for a technical EIS. What are those matters that you took into consideration?
> A Well, for example, **when you have EPRMP, that means you have to focus more on what you think are the most important issues of the project; and given our assessment, we focused on, for example: flooding, for example: the critical habitat, for example: the plight of the fisherfolk who were the residents within the site itself** x x x and focusing on these for example in the case of flooding we required more data, but they furnished data from [PAGASA], which did not satisfy us, because you cannot make predictions on micro term even the data they have submitted to us. **So we require[d from] them additional information rather than waiting for all the statistics involved, we simply presumed that flooding would be [very important and vital for the project and therefore,] focusing on it[,] we required [that the] management plan must be compatible with Manila Bay guidelines [on] critical habitat management plan [and] with Boulevard 2000 plan – all of which also have to be compatible with the R.A.s [involved,] for example [C]lean [A]ir [Act, [C]lean [W]ater [A]ct, and the [B]uilding [C]ode.** And so on and so forth.[14] (Emphasis supplied)

Additionally, as pointed out by the CA, Alltech was even required to meet a higher standard through the EPRMP, which is to preserve the environmental condition in the vicinity of the proposed project using as basis the higher quality of environment in 1990.[15] In explaining his preference for the EPRMP over the EIS, Prof. De Villa testified that:

> [i]n 1990 compared to fairly recently, the environmental quality of the cited vicinity was better, and therefore if that would be the basis for the management of the environment, then, that means you have a higher quality of environment that the proponent have (*sic*) to keep. In other words, through time, whether we like it or not, our environment degrades, **so what I am saying precisely because EPRMP is used, therefore the**

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14 *Rollo*, pp. 2809-2810.
15 *Ponencia*, p. 6.

> **proponents have to keep their promise to keep the quality of environment x x x as of 1990** x x x.[16] (Emphasis supplied)

Thus, contrary to the claim of petitioner that the EPRMP "looks backward"[17] and is "not responsive to present realities,"[18] the EPRMP actually ensures that the proponent will protect the environment according to the optimum standard. As assured by the DENR, the proponents are not only required to maintain the contemporary environmental conditions during the implementation of the project, they are likewise bound to improve the same consistent with the standards in 1996.[19]

Evidently, the foregoing considerations show that not only was the EPRMP the correct form of EIA study required based on the nature of the proposed project, it was also sufficient in assessing the environmental impact of the proposed project.

On the DENR's determination of the proper EIA form for the proposed project

It should be emphasized that it was the DENR-EMB that instructed Alltech to submit an EPRMP.[20] In this regard, the *ponencia* states:

> In the present case, no grave abuse of discretion was proven to be attributed to the DENR-EMB in instructing the project proponent to file an EPRMP. Hence, it enjoys the presumption of regularity in the performance of its official duties. Based on its technical expertise, it found that the information provided in an EPRMP sufficiently addressed the environmental concerns of the government.
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> It is within the DENR-EMB's function and expertise to determine the category or classification of a proposed project as it is equipped with the knowledge and competence to resolve issues involving the highly technical field of EIS system. Alltech merely complied with the instruction of the DENR-EMB to submit an EPRMP. The project proponent should not be faulted for this as it is not in the position to substitute the assessment or technical opinion of the DENR-EMB with its own judgment. It is within the sphere of technical knowledge and expertise of the DENR-EMB, and not the Court nor the project proponent, to determine the appropriate EIA report to submit for a particular project.[21]

I agree with the foregoing pronouncements. The adamant insistence on the "correct" type of EIA study, in the absence of any allegation of grave abuse of discretion on the part of the DENR-EMB, and without any technical and scientific expertise to support such claim, simply cannot be countenanced. As the administrative agency entrusted with the determination

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16 *Rollo*, pp. 1270-1271.
17 Id. at 91.
18 Id.
19 Id. at 2814.
20 *Ponencia*, p. 6.
21 Id. at 16.

as to which EIA document type applies to a particular application for ECC, falling as it does within its particular technical expertise, it is the DENR's determination, especially in the absence of a showing of grave abuse of discretion or patent irregularity, that should be accorded great respect by the Court. Indeed, this is the demand of the doctrine of separation of powers, which behooves the Court from interfering in matters addressed to the sound discretion of executive agencies with special competence unless there is a showing of grave abuse of discretion in the performance of their duties.

On the recommendation for the issuance of a Temporary Environmental Protection Order

For his part, Justice Leonen votes to issue a Temporary Environmental Protection Order (TEPO) to enjoin respondents from doing any act that may cause grave and irreparable injury to the Las Piñas-Parañaque Critical Habitat and Ecotourism Area (LPPCHEA). He explains:

> [T]his Court promulgated the Rules of Procedure for Environmental Cases, which provides for the issuance of the extraordinary writ of kalikasan. However, as the majority pointed out, the Las Piñas and Parañaque Coastal Bay Project has not yet begun construction. The Environmental Compliance Certificate's issuance does not mean approval to begin the reclamation project. There is, therefore, no evidence yet of imminent environmental damage that may be the subject of a writ of kalikasan.
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> There are, however, features of the Project which may need further study and approval. Thus, I recommend that this Court instead issue a [T]emporary [E]nvironmental [P]rotection [O]rder to enjoin any act that may cause grave and irreparable injury to the protected area and to the residents of Las Piñas and Parañaque, and to monitor any such acts once the Project has been commenced.[22]

With due respect to my colleague, I believe that a TEPO may be unnecessary or superfluous.

Lest it be forgotten, the ECC is a planning tool — its mere issuance does not automatically signal the actual implementation of the proposed project. It is still necessary that the requirements and conditions imposed therein are complied with. The following averments from the DENR are thus compelling:

> x x x **[T]he release of the ECC only allows the project to proceed to the next stage of project planning, which is the acquisition of approvals from other government agencies and LGUs.** Aside from the acquisition of these approvals, **the proponents must also comply with the conditions and undertakings in the ECC and EPRMP**. To name a few, these include the implementation of a Coastal Ecosystem

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22 Dissenting Opinion of Justice Leonen, pp. 13-14.

> Management Plan/Program, Information, Education and Communication Program, Flood Monitoring Plan, and alignment of the Environmental Management Plan with the Manila Bay Coastal Strategy. x x x
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> x x x x
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> **Moreover, the ECC demands compliance with** the Toxic Substances and Hazardous and Nuclear Wastes Control Act of 1990, Ecological Solid Waste Management Program Act of 2000, the Philippine Clear Water Act of 2004, and the Philippine Clean Air Act of 1999, **among other environmental laws and regulations**. Further, the ECC requires proper storm drainage system, concrete culverts, and other flood and erosion control [measures], noise and air pollution control measures to prevent environmental degradation.
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> Without any doubt, **the absence of compliance with the above conditions and undertakings, aside from those contained in the EPRMP, prevent the actual implementation of the coastal bay project. Also, the absence of the above plans and programs which are intended to direct the course of the project implementation renders the contention of petitioner as absurd.** As a planning tool, the ECC cannot embody the "specific details" for the implementation of the project, inasmuch as the post-conditions thereto, that will form part of the specific commitments of the proponents, are yet to be formulated by the concerned government agencies and institutions.
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> x x x x
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> **For the critical habitat alone [or the LPPCHEA], the proponents are mandated to coordinate with the Manila Bay Critical Habitat Management Council and the Protected Areas and Wildlife Bureau (PAWB) to tackle impacts of the project on the critical habitat, and implement the recommendations of the said council.** Thus, the project implementation cannot proceed without said recommendations.
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> Parenthetically, **the recommendation of both the Manila Bay Critical Habitat Management Council and the PAWB must be implemented before any work or construction activities may be made, especially those affecting the critical habitat**. Again, this condition seems to have been ignored by petitioner in claiming that the adoption of the Boulevard 2000 Framework Plan would destroy the ecosystems found in the critical habitat. Considering the ECC-required recommendations from the Manila Bay Critical Habitat Management Council and the PAWB, observance of the Boulevard 2000 Framework Plan cannot be made in its totality without endangering the critical habitat.[23] (Emphasis supplied)

It is evident therefore that before the proposed project can be implemented, Alltech must show compliance not only with the conditions in the EPRMP and ECC, but also with a plethora of environmental laws and regulations, and obtain the necessary permits from various government agencies tasked with protecting the environment. Thus, the prevention of grave and irreparable injury to the LPPCHEA and the residents of Las Piñas

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[23] *Rollo*, pp. 2819-2821.

and Parañaque may already be covered by these requirements prior to implementation. This therefore negates any need to issue a TEPO.

At this juncture, I wish to emphasize that respondents have shown that mitigating measures will be undertaken in particular regard to the LPPCHEA. Notably, unlike in the PEA-Amari project which included the LPPCHEA itself, Alltech's proposed project actually excludes the LPPCHEA from its coverage to ensure that it is not adversely impacted.[24] Despite the fact that the LPPCHEA area is already outside of the proposed project, the respondents have nonetheless recognized the vulnerability of the LPPCHEA and have vowed to undertake mitigating measures to ensure that the proposed project will not have any negative impact on the LPPCHEA. Indeed, respondents have considered measures that not only preserve the LPPCHEA, but improve its condition:

> 78. To recall, the DENR Vulnerability Report, which Petitioner cites in her Petition, states that an estimated 572.76 kilos of garbage are being thrown in the LPPCHEA everyday.
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> 79. The LPPCHEA is expected to deteriorate further if no active intervention is put in place to improve the current situation. **As adequately shown by ALLTECH during trial, the mitigation measures adopted by the Project proponents, not to mention the onerous conditions stated in the ECC, ensure that the Project will move towards the direction of environmental protection. Given all these, Petitioner's insistence to leave LPPCHEA as it is and let it further degrade is certainly absurd and irrational.**
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> 80. All told, the project masterplan has been formulated to allow the development works to co-exist with the LPPCHEA, with the latter serving as an eco-park/eco-tourism area. A vibrant and well-preserved LPPCHEA is, therefore, integral to the success of the Project.[25] (Emphasis supplied)

On the nature of a reclamation project and its effects on the environment

As regards the effects of the proposed project on the environment, Justice Javier opines:

> Verily, the question is not "whether actual environmental damage will occur" anymore, but how much more damage will it cause, for it has consistently been found and proven that reclamation had actually and already caused environmental damage. In fact, it is not only the aforementioned areas that will be exposed to flooding and inundation, but also the very reclaimed lands themselves.

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[24] Id. at 1276.
[25] Id. at 1284.

> For another, the reclamation projects x x x and the eventual construction of road networks and bridges will more likely than not cause direct negative impacts upon the [LPPCHEA]. x x x
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> x x x x
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> Hence, even respondents' evidence confirmed the conclusion of the Court of Appeals that "the threat of flooding as a consequence of land reclamation is conceded and thus the causal link between the human activity of reclamation and environmental threat of flooding is established."
>
> Worse, respondents' position rests on the premise that the recommended mitigating measures being in place would purportedly prevent or "would not aggravate" the flooding situations and "even reduce the level of flooding." [Geological expert Kelvin S. Rodolfo], however, remains unconvinced and unimpressed by such measures for being historically ineffective and even aggravating x x x.
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> x x x x
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> Clearly, respondents' confidence is misplaced. Short of any certainty, the promise of safety is but ideal and theoretical. In effect, respondents, again, have clearly acknowledged, nay, admitted that the proposed reclamation would cause environmental impacts.[26] (Emphasis omitted)

I disagree. With due respect, these statements do not paint the entire picture.

The need for extreme caution in examining the possible negative effects of reclamation projects on the environment is understandable and laudable. Nonetheless, the Court should not operate on the premise that reclamation in itself is harmful to the environment. Notably, reclamation is not prohibited by our environmental laws. Rather, what the laws provide are ways to regulate reclamation projects in such a way as to mitigate or prevent altogether any negative impact these may have on the environment.

Thus, while reclamation activities may have negative impacts on the environment, the same will only arise if mitigating measures are not put in place to address these possible effects. On this note, the Court cannot simply brush aside the proposed mitigating measures of the experts and prematurely claim that these would not be met. The Court does not rule on surmises, speculations, and generalizations. Otherwise, to base our ruling on mere suppositions would stymie any reclamation project that would be proposed, regardless of its compliance with the requirements of law. This would be tantamount to saying, in simple terms, that all reclamation projects are bad for the environment. As for the credence of such belief, it is not for the Court to determine. What the Court is called to do is to ensure compliance with the laws. On this note, the following averments of the DENR are enlightening:

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[26] Dissenting Opinion of Justice Javier, pp. 5-9.

The process of reclamation *per se* does not result to flooding or significant environmental damage contrary to petitioner's baseless conclusions.

Petitioner's assertion that "aggravated flooding as a direct result of a reclamation project is conceded fact, rendering any discussion thereon unnecessary" is literally **taken out of context**. To be clear, **the Court of Appeals' declaration that "the threat of flooding as a consequence of land reclamation is conceded" has been qualified by the conclusion that "the extent and magnitude of this threat have been scientifically determined and quantified and they do not amount at all to any such massive flooding nor to any such destruction of the critical habitat LPPCHEA asserted by the petitioner."** x x x

x x x x

Indeed, the mere introduction of works upon the environment, by themselves, cannot cause significant threat, damage or destruction thereon. Activities which may affect the environment such as mining, cutting of trees, land development and urban expansion (which may aggravate global warming) are not proscribed provided that scientific studies or environmental assessments have been made to identify the potential risks and measures which may be taken to address the same.

These include **reclamation activities which do not necessarily result to massive flooding or significant environmental damage as long as scientific studies have been conducted and the needed measures to address the potential risks are observed during the implementation of the project. The recurring floods in Metro Manila are not caused by reclamation activities; instead, these are caused by the proliferation of garbage, human recklessness and poor engineering, among others.**

On the other hand, the vast portions of the Coastal Bay Area, along the stretch of Roxas Boulevard, are reclaimed lands which, by themselves, do not bring about flooding to the nearby areas. **Well[-]designed and properly executed reclamation projects will not cause flooding. In fact, these projects can prevent flooding by providing added protection such as sea barriers to mitigate the effects of accelerated rising sea levels caused by global warming.**[27] (Emphasis and underscoring supplied)

The Court, which clearly has no expertise in these matters, should give credence and defer to these findings by the DENR. While the Court has jurisdiction and power to decide cases, it clearly oversteps its boundaries by not giving proper respect to the findings and recommendations of the administrative agency on questions that demand the exercise of sound administrative discretion requiring the special knowledge, experience, and services of the administrative tribunal to determine technical and intricate matters of fact.[28]

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27 *Rollo*, pp. 2822-2823.

28 *Osmeña v. Garganera*, 828 Phil. 560, 573 (2018).

In sum, considering that the laws do not categorically prohibit reclamation activities, it becomes a matter of evidence whether such activities would cause damage to the environment of such magnitude as to prejudice the life, health, or property of inhabitants in two or more cities or provinces so as to enable the issuance of the privilege of the writ of *kalikasan*. However, as found by the CA after an exhaustive study of the evidence presented before it, which is affirmed by the *ponencia*, petitioner simply failed to present credible, competent, and reliable evidence to support her allegations. Moreover, petitioner's apprehensions on the negative impacts of the proposed project on the environment have been disproved by objective, expert, and scientific studies of reputable entities with vast international experience.

Final Note

The DAO 03-30 lays down the basic policy and operating principles of the government in evaluating the impacts of proposed projects on the environment. It provides that consistent with the principles of sustainable development, the policy of the State in environmental impact assessments is to "ensure a rational balance between socio-economic development and environmental protection for the benefit of present and future generations"[29] and to "[assess] the direct and indirect impacts of a project on the biophysical and human environment and [ensure] that these impacts are addressed by appropriate environmental protection and enhancement."[30]

Thus, it is important to strike a delicate balance between protecting the environment and promoting socio-economic development, both of which are for the benefit of present and future generations. This balancing act is reflected in the following statement of the City of Las Piñas as contained in its Comment, which was adopted by the City of Parañaque:

> 27. Essentially, local revenue multipliers will arise from tourism that would be expected with the improvement of conditions in the LPPCHEA and expansion of residential and commercial establishments after completion. These sprang from the common knowledge that Las [Piñas] City is the fourth most populated but has the fifth lowest income in the National Capital Region. **The City should not be restrained from pursuing a legitimate project that aims to spur its socio-economic development.**
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> 28. **But more importantly, on top of it all, Respondent City of Las [Piñas] will certainly not allow to be the cause of environmental damage and dangerous flooding.** In pursuing the project, it has directed the adoption of concrete measures to protect the LPPCHEA and improve flooding conditions. The City of Las [Piñas] has insisted on thorough research and studies to avoid any tragedy that may befall its environment and citizenry. Given the foregoing, it would be a dangerous precedent to allow the instant Petition supported merely by bare allegation and

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29 DAO 03-30, Art. 1, Sec. 1; DAO 03-30 Revised Procedural Manual 1.0(1).

30 DAO 03-30, Art. 1, Sec. 1(a); DAO 03-30 Revised Procedural Manual 1.0(1)(a).

> suspicion. To do so would be the real tragedy in that sense.[31] (Emphasis supplied)

The writ of *kalikasan* is among the mechanisms by which the Court takes a proactive role in ensuring that the constitutional right of the people to a balanced and healthful ecology may be advanced and protected.[32] However, being proactive does not mean that the Court may arrogate unto itself the determination of intricacies that are far beyond its capacity by insisting on generalized and incomplete assumptions and specious speculations when there is strong scientific evidence to the contrary. In the absence of grave abuse of discretion on the part of the DENR, the Court must avoid the urge to supplant its own perceived superiority over administrative agencies which are not only given the specific task and competence by the law, but are also far more knowledgeable on the technicalities involving environmental matters.

Parties who seek the issuance of the writ of *kalikasan*, whether on their own or on others' behalf, carry the burden of substantiating the writ's elements.[33] In this case, petitioner failed to satisfy the burden to prove her claims. Based on a careful and meticulous weighing of the evidence presented by the parties, the CA gave more weight to respondent's evidence:

> Petitioner Villar may have been motivated by good faith x x x. **Unfortunately, the ones that she commissioned failed to conduct a thorough, rigorous and objective study on the possible impacts of the proposed reclamation project.** The studies made by Tricore and CEC-P were **not comprehensive and the methodologies applied were inappropriate**. There was also **lack of expertise** on the part of Tricore and CEC-P in the areas of hydrology and hydraulics, which areas are pertinent in the conduct of their respective studies. Thus, petitioner Villar failed to support her claim by any competent, credible and reliable evidence that the proposed reclamation project will expose her and the Las Piñas and Parañaque residents and their properties to catastrophic environmental damage.
>
> **On the other hand, Alltech and the other respondents were able to establish the scientific and expert studies [that] assessed the potential flooding and flushing impact that may arise from the coastal bay project.** The expert, objective studies conducted by DCCD, Surbana and DHI, **revealed that if all the recommended mitigating measures were to be implemented**, the [c]oastal bay project **would not aggravate the flooding situation** in the river mouths of Parañaque, Las Piñas-Zapote Rivers, and it **may even reduce the level of flooding**.[34] (Emphasis supplied)

To reiterate, petitioner failed to present credible, competent, and reliable evidence to support her allegations. Moreover, petitioner's apprehensions on the negative impacts of the proposed project on the

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31 *Rollo*, pp. 2748-2749.

32 *See* RULES OF PROCEDURE FOR ENVIRONMENTAL CASES, A.M. 09-6-8-SC (2010), Rule 1, Sec. 3 and Rule 7, Sec. 1.

33 *Abogado v. Department of Environment and Natural Resources*, supra note 3.

34 *Rollo*, pp. 48-49.

environment have been disproved by objective, expert, and scientific studies of reputable entities with vast international experience. Consequently, petitioner failed to prove her entitlement to the privilege of the writ of *kalikasan*.

ACCORDINGLY, I vote to DENY the petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice