Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

SMART COMMUNICATIONS, INC.,
Petitioner,

- *versus* -

ARSENIO ALDECOA, JOSE B. TORRE, CONRADO U. PUA, GREGORIO V. MANSANO, JERRY CORPUZ and ESTELITA ACOSTA,
Respondents.

G.R. No. 166330

Present:

SERENO, *CJ.*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ.*

Promulgated:

SEP 1 1 2013

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DECISION

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioner Smart Communications, Inc., seeking the reversal of the Decision[1] dated July 16, 2004 and Resolution[2] dated December 9, 2004 of the Court of Appeals in CA-G.R. CV No. 71337. The appellate court (1) reversed and set aside the Order[3] dated January 16, 2001 of the Regional Trial Court (RTC), Branch 23, of Roxas, Isabela, in Civil Case No. Br. 23-632-2000 dismissing the complaint for abatement of nuisance and injunction against petitioner, and (2) entered a new judgment declaring petitioner's cellular base station located in Barangay Vira, Municipality of Roxas, Province of Isabela, a nuisance and ordering petitioner to cease and desist from operating the said cellular base station.

The instant Petition arose from the following facts:

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1 *Rollo*, pp. 44-57; penned by Associate Justice Ruben T. Reyes with Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr., concurring.

2 Id. at 58-59.

3 Id. at 126-128; penned by Judge Teodulo E. Mirasol.

Petitioner is a domestic corporation engaged in the telecommunications business. On March 9, 2000, petitioner entered into a contract of lease[4] with Florentino Sebastian in which the latter agreed to lease to the former a piece of vacant lot, measuring around 300 square meters, located in Barangay Vira, Roxas, Isabela (leased property). Petitioner, through its contractor, Allarilla Construction, immediately constructed and installed a cellular base station on the leased property. Inside the cellular base station is a communications tower, rising as high as 150 feet, with antennas and transmitters; as well as a power house open on three sides containing a 25KVA diesel power generator. Around and close to the cellular base station are houses, hospitals, clinics, and establishments, including the properties of respondents Arsenio Aldecoa, Jose B. Torre, Conrado U. Pua, Gregorio V. Mansano, Jerry Corpuz, and Estelita Acosta.

Respondents filed before the RTC on May 23, 2000 a Complaint against petitioner for abatement of nuisance and injunction with prayer for temporary restraining order and writ of preliminary injunction, docketed as Civil Case No. Br. 23-632-2000. Respondents alleged in their Complaint that:

> 5. [Petitioner's] communications tower is 150 feet in height equivalent to a 15-storey building. It is a tripod-type tower made of tubular steel sections and the last section, to which the huge and heavy antenna/transponder array will be attached, about to be bolted on. Weight of the antenna mast is estimated at one (1) to three (3) tons, more or less. As designed, the antenna/transponder array are held only by steel bolts without support of guywires;
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> 6. This SMART tower is no different from the *Mobiline* tower constructed at Reina Mercedes, Isabela which collapsed during a typhoon that hit Isabela in October 1998, an incident which is of public knowledge;
>
> 7. With its structural design, SMART's tower being constructed at Vira, Roxas, Isabela, is weak, unstable, and infirm, susceptible to collapse like the *Mobiline* tower which fell during a typhoon as earlier alleged, and its structural integrity being doubtful, and not earthquake proof, this tower poses great danger to life and limb of persons as well as their property, particularly, the [respondents] whose houses abut, or are near or within the periphery of the communications tower;
>
> 8. This tower is powered by a standby generator that emits noxious and deleterious fumes, not to mention the constant noise it produces, hence, a hazard to the health, not only of the [respondents], but the residents in the area as well;
>
> 9. When in operation, the tower would also pose danger to the life and health of [respondents] and residents of the barangay, especially

[4] Records, pp. 127-128.

children, because of the ultra high frequency (UHF) radio wave emissions it radiates. Only recently, *Cable News Network* (CNN) reported that cell phones, with minimal radiated power, are dangerous to children, so more it is for this communications tower, whose radiated power is thousands of times more than that of a cellphone;

10. Worse, and in violation of law, [petitioner] constructed the tower without the necessary public hearing, permit of the barangay, as well as that of the municipality, the Environmental Compliance Certificate of the [Department of Environment and Natural Resources (DENR)], construction permit, and other requirements of the National Telecommunications Commission (NTC), and in fact committed fraud in its application by forging an undated certification "*that Barangay Vira does not interpose any objection to the proposed construction of a 150 ft. tower & site development,*" as this certification was never issued by [respondent] Jose Torre, the Barangay Captain of Vira, Roxas, Isabela, and without the official barangay seal, attached as *Annex "A"* and Certification of the Barangay Officer of the Day that no public hearing was held, attached as *Annex "B"* made integral part hereof;

11. Not being armed with the requisite permits/authority as above mentioned, the construction of the tower is illegal and should be abated;

12. [Respondents] and [petitioner] should not wait for the occurrence of death, injuries and damage on account of this structure and judicial intervention is needed to ensure that such event will not happen[.][5]

Respondents thus prayed for the RTC to:

1. Issue a temporary restraining order and after due hearing to issue a writ of preliminary mandatory injunction;

2. Render judgment:

- Making the writ of preliminary mandatory injunction permanent;
- Declaring the construction of the SMART tower as a nuisance *per se* or *per accidens*;
- Ordering the abatement of this nuisance by ordering the removal and/or demolition of [petitioner's] communication tower;
- Condemning [petitioner] to pay [respondents] moral damages in the sum of ₱150,000.00 and exemplary damages in the sum of ₱30,000.00;
- Ordering [petitioner] to pay attorney's fees in the amount of ₱20,000.00 plus trial honoraria of ₱1,000.00 for every appearance in Court;
- Ordering [petitioner] to refund to [respondents] litigation expenses in the amount of not less than ₱10,000.00;

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5 Id. at 8-9.

> 3. And for such other reliefs as are just and equitable in the premises.[6]

In its Answer/Motion to Oppose Temporary Restraining Order with Compulsory Counterclaim, petitioner raised the following special and affirmative defenses:

> 13. [Petitioner] through its contractor, Allarilla Construction (hereafter Allarilla), applied for a Building Permit through the office of Municipal engineer Virgilio A. Batucal on 13 April 2000 and subsequently received its approval 17 April 2000. (a copy of the Official receipt and the Building Permit is hereto attached respectively as Annex "A" and "B" and made an integral part hereof)
>
> 14. [Petitioner], again through Allarilla applied for an Environmental Compliance Certificate (ECC) the approval of which, at present, remains pending with the DENR-[Environment Management Bureau (EMB)].
>
> 15. [Petitioner] should not in anyway be liable for fraud or bad faith as it had painstakingly secured the consent of majority of the residents surrounding the location of the Tower in order to seek their approval therewith. (a copy of the list of residents who consented thereto is attached herewith as Annex "C" and made an integral part hereof)
>
> 16. Among the residents who signed the consent list secured by [petitioner] include the [respondent] Jose B. Torre and a certain Linaflor Aldecoa, who is related to [respondent] Arsenio Aldecoa.
>
> 17. [Petitioner] did not forge the Barangay Certification but actually secured the consent of Barangay Captain Jose Torre through the efforts of Sangguniang Bayan (SB) Board Member Florentino Sebastian. (a copy of the Barangay Certification is attached herewith as Annex "D" and made an integral part hereof)
>
> 18. [Petitioner] Tower's safety has been pre-cleared and is unlikely to cause harm in exposing the members of the public to levels exceeding health limits considering that the antenna height of the Tower is 45.73 meters or equivalent to 150 feet as stated in a Radio Frequency Evaluation report by Elizabeth H. Mendoza health Physicist II, of the Department of Health Radiation Health Service dated 9 May 2000. (a copy is hereto attached as Annex "E" and made an integral part hereof)
>
> 19. The structural stability and soundness of the Tower has been certified by Engr. Melanio A. Guillen Jr. of the Engineering Consulting firm Microflect as contained in their Stress Analysis Report (a copy is hereto attached as Annex "F" and made an integral part hereof)

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[6] Id. at 10.

> 20. [Petitioner's] impetus to push through with the construction of the Tower is spurred by the Telecommunications Act of 1995 or Republic Act 7925 which states that the "expansion of the telecommunications network shall give priority to improving and extending basic services to areas not yet served." Article II, Sec. 4 par. B. (a copy of RA 7925 is hereto attached as Annex "G" and made an integral part hereof)[7]

In the end, petitioner sought the dismissal of respondents' Complaint; the denial of respondents' prayer for the issuance of a temporary restraining order and writ of preliminary mandatory injunction; the award of moral, nominal, and exemplary damages in the amounts which the court deem just and reasonable; and the award of attorney's fees in the sum of ₱500,000.00 and litigation expenses as may be proven at the trial.

Respondents then contested petitioner's allegations and averred in their Reply and Answer to Counterclaim that:

- [Petitioner's] cell site relay antenna operates on the ultra high frequency (UHF) band, or gigabyte band, that is much higher than that of TV and radio broadcasts which operates only on the Very High Frequency (VHF) band, hence, [petitioner's] equipment generates dangerously high radiation and emission that is hazardous to the people exposed to it like [respondents], whose houses are clustered around [petitioner's] cell site antenna/communications tower;

- As admitted, [petitioner] has not secured the required Environmental Compliance Certificate (ECC). It has not even obtained the initial compliance certificate (ICC). In short, [petitioner] should have waited for these documents before constructing its tower, hence, it violated the law and such construction is illegal and all the more sustains the assertions of [respondents];

- The alleged building permit issued to [petitioner] is illegal because of the lack of an ECC and that [petitioner's] application for a building permit covered only a building and not a cell site antenna tower. Moreover, the [petitioner] failed to obtain a National Telecommunications Commission (NTC) Clearance to construct the communications tower. As will be seen in the application and permit, the documents are dated April, 2000 while the construction begun in March, 2000;

- The technical data that served as the basis of the Radio Frequency Radiation Evaluation of [petitioner's] mobile telephone base station was provided solely by the [petitioner] and in fact misled the DOH Radiation Health Service. It states an absurdly low

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[7] Id. at 20-21.

transmitted power of twenty (20) watts for a dual band mobile phone service such as [petitioner] Smart's GSM 900/1800 Dual Band which is the standard service it offers to the public;

- The Stress Analysis Report is self-serving and tested against the communications tower, the structural integrity is flawed;

- While [respondents] may yield to the mandate of Republic Act No. 7925, otherwise known as the Telecommunications Act of 1995, extending and improving or upgrading of basic services to areas not yet served, this should not be taken as a license to gamble and/or destroy the health and well-being of the people;

- [Petitioner's] alleged certification (*Annex "D", should be Annex "4"*) is the very same certification appended to [respondents'] complaint which they have assailed as a forgery and which [respondent] Jose Torre, the Barangay Captain of Vira, Roxas, Isabela, emphatically denies having signed and/or issued the same. Moreover, the certification gives [petitioner] away because [respondent] Jose Torre has no technical education using the telecommunications term "*SMART GSM & ETACS project,*" in said falsified certification;

- [Petitioner's] claim that it is not liable for fraud or bad faith, proudly stating that it has painstakingly secured the consent of the majority of the residents surrounding the tower site, is belied by the alleged Conformity of Host Community (Residential) – Annex "C" – *should be Annex "3"* – where only a handful of residents signed the document prepared by [petitioner] and the contents of which were misrepresented by [a] Sangguniang Bayan Member in the person of Nick Sebastian who is an interested party being the owner of the land where the tower is constructed. It was misrepresented to Linaflor Aldecoa, wife of [respondent] Arsenio Aldecoa that it was already anyway approved and signed by Barangay Captain Jose Torre when in truth his signature was again forged by the [petitioner] and/or its employees or agents or person working for said company. Also, there are persons who are not residents of Vira, Roxas, Isabela who signed the document such as *Melanio C. Gapultos of Rizal, Roxas, Isabela, Carlito Castillo of Nuesa, Roxas, Isabela, and another, Gennie Feliciano from San Antonio, Roxas, Isabela*. Certainly six (6) persons do not constitute the conformity of the majority of the residents of Vira, Roxas, Isabela, and those immediately affected by the cellsite tower like [respondents]. This document is likewise flawed and cannot help [petitioner's] cause. Besides, [respondents] and other residents, sixty-two (62) of them, communicated their protest against the erection of the cell tower specifying their reasons therefor and expressing their sentiments and fears about [petitioner's] communications tower, xerox copy attached as *Annex "A"* and made integral part hereof;

> - [Respondents] likewise specifically deny the truth of the allegation in *paragraph 12* of the answer, the truth being that the lot leased to [petitioner] is owned by SB Member Nick Sebastian and that Florentino Sebastian is dummying for the former in avoidance of possible anti-graft charges against his son concerning this project. It is also further denied for lack of knowledge or information sufficient to form a belief as to the truth thereof. Moreover, the lease contract, copy not annexed to [petitioner's] answer, would automatically be terminated or ended in the event of complaints and/or protests from the residents[.][8]

Civil Case No. Br. 23-632-2000 was set for pre-trial on September 28, 2000.[9]

On September 11, 2000, petitioner filed its Pre-Trial Brief in which it identified the following issues:

> 4.1. Whether [respondents have] a cause of action against the [petitioner] SMART for this Honorable Court to issue a Preliminary Mandatory Injunction over the SMART tower in Roxas, Isabela as it allegedly poses a threat to the lives and safety of the residents within the area and if [respondents] are entitled to moral and exemplary damages as well as attorney's fees and expenses of litigation.
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> 4.2 Whether the complaint should be dismissed in that the claim or demand set forth in the Complaint is fictitious, imaginary, sham and without any real basis.
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> 4.3. What [petitioner] SMART is entitled under its compulsory counterclaim against [respondents] for moral and exemplary damages, attorney's fees, and other expenses of litigation.[10]

On even date, petitioner filed a Motion for Summary Judgment that reads:

> [Petitioner] SMART Communications Inc., thru counsel, respectfully manifests that:
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> 1. There is no need for a full-blown trial as the causes of action and issues have already been identified in all the pleadings submitted to this Honorable court by both [respondents] and [petitioner]
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> 2. There is clearly no genuine issue as to any material fact or cause in the action.

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8 Id. at 45-46.
9 Id. at 57.
10 Id. at 63.

> 3. There is no extreme urgency to issue a Preliminary Mandatory Injunction as stated in an affidavit executed by SMART Senior Supervisor Andres V. Romero in an affidavit hereto attached as Annex "A"
>
> 4. [Petitioner] seeks immediate declaratory relief from [repondents'] contrived allegations as set forth in [their] complaint;
>
> Wherefore, it is most respectfully prayed of this Honorable Court that summary judgment be rendered pursuant to Rule 35 of the Revised Rules of Court.[11]

Respondents filed their Pre-Trial Brief on September 21, 2000, proposing to limit the issues, *viz*:

> - Whether [petitioner's] communications tower is a nuisance *per se/per accidens* and together with its standby generator maybe abated for posing danger to the property and life and limb of the residents of Vira, Roxas, Isabela more particularly the [respondents] and those whose houses are clustered around or in the periphery of the cell site.
>
> - Damages, attorney's fees, litigation expenses and other claims.[12]

Respondents likewise filed on September 21, 2000 their Opposition to petitioner's Motion for Summary Judgment, maintaining that there were several genuine issues relating to the cause of action and material facts of their Complaint. They asserted that there was a need for a full blown trial to prove the allegations in their Complaint, as well as the defenses put up by petitioner.[13]

In its Order[14] dated September 28, 2000, the RTC indefinitely postponed the pre-trial until it has resolved petitioner's Motion for Summary Judgment. In the same Order, the RTC directed the counsels of both parties to submit their memoranda, including supporting affidavits and other documents within 30 days.

Petitioner submitted its Memorandum[15] on October 26, 2000; while respondents, following several motions for extension of time, filed their Memorandum[16] on November 22, 2000. In their Memorandum, respondents additionally alleged that:

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11 Id. at 67.
12 Id. at 79.
13 Id. at 82.
14 Id. at 84.
15 Id. at 88-92.
16 Id. at 101-110.

> [T]he cellsite base station is powered by a roaring 25KVA power generator. Operated 24 hours since it started more than a month ago, it has sent "*jackhammers into the brains*" of all the inhabitants nearby. Everyone is going crazy. A resident just recently operated for breast cancer is complaining that the noise emanating from the generator is fast tracking her appointment with death. She can no longer bear the unceasing and irritating roar of the power generator.
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> For this, the residents, led by the [respondents], sought a noise emission test of the power generator of [petitioner] SMART Communications with the DENR. The test was conducted on November 14 and 15, 2000 and the result shows that the [petitioner's] power generator failed the noise emission test, day and night time. Result of this test was furnished the Municipal Mayor of Roxas, Isabela (See Communication of DENR Regional Director Lorenzo C. Aguiluz to Mayor Benedicto Calderon dated November 16, 2000 and the Inspection Monitoring Report).
>
> With these findings, the power generator is also a nuisance. It must also be abated. [17]

On January 16, 2001, the RTC issued its Order granting petitioner's Motion for Summary Judgment and dismissing respondents' Complaint. The RTC ruled as follows:

> What is of prime importance is the fact that contrary to the [respondents'] speculation, the radio frequency radiation as found out by the Department of Health is much lower compared to that of TV and radio broadcast. The [respondents'] counter to this claim is that the Department of Health was misled. This is a mere conclusion of the [respondents].
>
> The [respondents] in opposing the Smart's construction of their cellsite is anchored on the supposition that the operation of said cellsite tower would pose a great hazard to the health of the alleged cluster of residents nearby and the perceived danger that the said tower might also collapse in case of a strong typhoon that fell the Mobiline Cellsite tower of Mobiline (sic). The structured built of the Smart's Cellsite tower is similar to that of the Mobiline.
>
> Now, as to the Court's assessment of the circumstances obtaining, we find the claim of the [respondents] to be highly speculative, if not an isolated one. Elsewhere, we find several cellsite towers scaterred (sic) all over, both of the Smart, Globe, and others, nay even in thickly populated areas like in Metro Manila and also in key cities nationwide, yet they have not been outlawed or declared nuisance as the [respondents] now want this Court to heed. To the thinking of the Court, the [respondents] are harping imagined perils to their health for reason only known to them perhaps especially were we to consider that the Brgy. Captain of Vira earlier gave

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[17] Id. at 107.

> its imprimatur to this project. Noteworthy is the fact that the alleged cluster of residential houses that abut the cellsite tower in question might be endangered thereby, the [respondents] are but a few of those residents. If indeed, all those residents in Vira were adversely affected for the perceived hazards posed by the tower in question, they should also have been joined in as [respondents] in a class suit. The sinister motive is perhaps obvious.
>
> All the foregoing reasons impel this Court to grant the [petitioner's] motion for the dismissal of the complaint, the perceived dangers being highly speculative without any bases in fact. Allegations in the complaint being more imaginary than real, do not constitute factual bases to require further proceeding or a trial. As to the claim that there is no certification or clearance from the DENR for the [petitioner] to lay in wait before the construction, suffice it to say that no action as yet has been taken by said office to stop the ongoing operation of said cellsite now in operation. There has been no hue and cry from among the greater majority of the people of Roxas, Isabela, against it. Al contrario, it is most welcome to them as this is another landmark towards the progress of this town.[18]

The dispositive portion of the RTC Order reads:

> WHEREFORE, in view of the foregoing considerations, the Court hereby renders judgment dismissing the complaint as the allegations therein are purely speculative and hence no basis in fact to warrant further proceedings of this case.
>
> The Court finds no compelling grounds to award damages.
>
> Without costs.[19]

In another Order[20] dated February 27, 2001, the RTC denied respondents' Motion for Reconsideration.

Respondents filed an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 71337.

The Court of Appeals rendered its Decision on July 16, 2004. The appellate court declared the cellular base station of petitioner a nuisance that endangered the health and safety of the residents of Barangay Vira, Roxas, Isabela because: (1) the locational clearance granted to petitioner was a nullity due to the lack of approval by majority of the actual residents of the *barangay* and a *barangay* resolution endorsing the construction of the cellular base station; and (2) the sound emission of the generator at the

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18 *Rollo*, pp. 127-128.
19 Id. at 128.
20 Id. at 136.

cellular base station exceeded the Department of Environment and Natural Resources (DENR) standards. Consequently, the Court of Appeals decreed:

> **WHEREFORE**, the appealed decision is hereby **REVERSED** and **SET ASIDE**. A new one is entered declaring the communications tower or base station of [petitioner] Smart Communications, Inc. located at Brigido Pascual Street in Vira, Municipality of Roxas, Province of Isabela, a nuisance. [Petitioner] is ordered to cease and desist from operating the said tower or station.[21]

Petitioner filed its Motion for Reconsideration arguing that: (1) the basis for the judgment of the appellate court that the cellular base station was a nuisance had been extinguished as the generator subject of the Complaint was already removed; and (2) there had been substantial compliance in securing all required permits for the cellular base station.[22]

The Court of Appeals, in a Resolution dated December 9, 2004, refused to reconsider its earlier Decision, reasoning that:

> [Petitioner] principally anchors its pleas for reconsideration on the Certification issued by Roxas, Isabela Municipal Engineer Virgilio Batucal, declaring that upon actual inspection, no Denyo Generator Set has been found in the company's cell site in Roxas, Isabela. We hold, however, that the certification dated August 12, 2004, taken on its own, does not prove Smart's allegation that it has abandoned using diesel-powered generators since January 2002. [Respondents'] current photographs of the cell site clearly shows (sic) that Smart continues to use a mobile generator emitting high level of noise and fumes.
>
> We have gone over [petitioner's] other arguments and observed that they are merely repetitive of previous contentions which we have judiciously ruled upon.[23] (Citations omitted.)

Petitioner seeks recourse from the Court through the instant Petition, assigning the following errors on the part of the Court of Appeals:

> 21.0 The Court of Appeals erred when it encroached upon an executive function of determining the validity of a locational clearance when it declared, contrary to the administrative findings of the Housing Land Use and Regulatory Board ("HLURB"), that the locational clearance of Petitioner was void.
>
> 22.0 The Court of Appeals erred when it resolved an issue that was not submitted to it for resolution and in the process had usurped a purely executive function.

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21 Id. at 56.
22 CA *rollo*, pp. 93-96.
23 *Rollo*, p. 59.

> 23.0 The Court of Appeals erred in declaring Petitioner's entire base station a nuisance considering that it was only a small part of the base station, a generator that initially powered the base station, that was reportedly producing unacceptable levels of noise.
>
> 24.0 The Court of Appeals erred in not considering that the supervening event of shut down and pull out of the generator in the base station, the source of the perceived nuisance, made the complaint for abatement of nuisance academic.[24]

The Petition is partly meritorious. While the Court agrees that the Court of Appeals should not have taken cognizance of the issue of whether the locational clearance for petitioner's cellular base station is valid, the Court will still not reinstate the RTC Order dated January 16, 2001 granting petitioner's Motion for Summary Judgment and entirely dismissing Civil Case No. Br. 23-632-2000. The issues of (1) whether petitioner's cellular base station is a nuisance, and (2) whether the generator at petitioner's cellular base station is, by itself, also a nuisance, ultimately involve disputed or contested factual matters that call for the presentation of evidence at a full-blown trial.

On the finding of the Court of Appeals that petitioner's locational clearance for its cellular base station is a nullity

Based on the principle of exhaustion of administrative remedies and its corollary doctrine of primary jurisdiction, it was premature for the Court of Appeals to take cognizance of and rule upon the issue of the validity or nullity of petitioner's locational clearance for its cellular base station.

The principle of exhaustion of administrative remedies and the doctrine of primary jurisdiction were explained at length by the Court in *Province of Zamboanga del Norte v. Court of Appeals*,[25] as follows:

> The Court in a long line of cases has held that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought. The premature resort to the court is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel, the case may be dismissed for lack of cause of action.

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24 Id. at 15-16.

25 396 Phil. 709, 717-720 (2000).

> The doctrine of exhaustion of administrative remedies is not without its practical and legal reasons. Indeed, resort to administrative remedies entails lesser expenses and provides for speedier disposition of controversies. Our courts of justice for reason of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency every opportunity to correct its error and to dispose of the case.
>
> x x x x
>
> The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence.
>
> We have held that while the administration grapples with the complex and multifarious problems caused by unbridled exploitation of our resources, the judiciary will stand clear. A long line of cases establishes the basic rule that the court will not interfere in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.
>
> In fact, a party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention. The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that when the administrative body, or grievance machinery, is afforded a chance to pass upon the matter, it will decide the same correctly. (Citations omitted.)

The Court again discussed the said principle and doctrine in *Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc., et al.*,[26] citing *Republic v. Lacap*,[27] to wit:

> We have consistently declared that the doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.

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[26] G.R. No. 175039, April 18, 2012, 670 SCRA 83, 89-90.

[27] 546 Phil. 87 (2007).

> In the case of *Republic v. Lacap*, we expounded on the doctrine of exhaustion of administrative remedies and the related doctrine of primary jurisdiction in this wise:
>
> > The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.
> >
> > Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands 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. (Citations omitted.)

The Housing and Land Use Regulatory Board (HLURB)[28] is the planning, regulatory, and quasi-judicial instrumentality of government for land use development.[29] In the exercise of its mandate to ensure rational land use by regulating land development, it issued HLURB Resolution No. R-626, series of 1998, Approving the Locational Guidelines for Base Stations of Cellular Mobile Telephone Service, Paging Service, Trunking Service, Wireless Loop Service and Other Wireless Communication Services (HLURB Guidelines). Said HLURB Guidelines aim to protect "providers and users, as well as the public in general while ensuring efficient and responsive communication services."

Indeed, the HLURB Guidelines require the submission of several documents for the issuance of a locational clearance for a cellular base station, including:

> IV. Requirements and Procedures in Securing Locational Clearance
>
> A. The following documents shall be submitted in duplicate:
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> x x x x

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[28] Executive Order No. 648, series of 1981, established the Human Settlements Regulatory Commission (HSRC). Subsequently, Executive Order No. 90, series of 1986, renamed the HSRC as the HLURB.

[29] http://hlurb.gov.ph/laws-issuances-2/?tabgarb=tab1

g. Written Consent:

g.1 Subdivisions

x x x x

g. 1.2 In the absence of an established [Homeowners Association], consent/ affidavit of non-objection from majority of actual occupants and owners of properties within a radial distance equivalent to the height of the proposed base station measured from its base, including all those whose properties is adjoining the proposed site of the base station. (Refer to Figure 2)

x x x x

h. Barangay Council Resolution endorsing the base station.

Correlatively, the HLURB provides administrative remedies for non-compliance with its requirements.

In 2000, when factual precedents to the instant case began to take place, HLURB Resolution No. R-586, series of 1996, otherwise known as the 1996 HLURB Rules of Procedure, as amended, was in effect. The original 1996 HLURB Rules of Procedure was precisely amended by HLURB Resolution No. R-655, series of 1999, "so as to afford oppositors with the proper channel and expeditious means to ventilate their objections and oppositions to applications for permits, clearances and licenses, as well as to protect the rights of applicants against frivolous oppositions that may cause undue delay to their projects[.]"

Under the 1996 HLURB Rules of Procedure, as amended, an opposition to an application for a locational clearance for a cellular base station or a complaint for the revocation of a locational clearance for a cellular base station already issued, is within the original jurisdiction of the HLURB Executive Committee. Relevant provisions read:

RULE III
Commencement of Action, Summons and Answer

x x x x

SECTION 2. *Opposition to Application for Permit/License/ Clearance.* – When an opposition is filed to an application for a license,

permit or clearance with the Board or any of its Regional Field Office, the Regional Officer shall make a **preliminary evaluation and determination** whether the case is impressed with **significant economic, social, environmental or national policy implications**. If he/she determines that the case is so impressed with significant economic, social, environmental or national policy implications, such as, but not limited to:

1) **Projects of national significance**, for purposes of this rule, a project is of national significance if it is one or falls under any of those enumerated in Rule III, Section 3 of these Rules, as amended;

2) Those involving zoning variances and exceptions;

3) Those involving significant public interest or policy issues;

4) Those endorsed by the zoning administrators of local government units.

The Regional Officer shall cause the records of the case to be transmitted to the **Executive Committee** which shall assume **original jurisdiction** over the case, otherwise, the Regional Officer shall act on and resolve the Opposition.

SECTION 3. A **project is of national significance** if it involves any of the following:

a) Power generating plants (*e.g.*, coal-fired thermal plants) and related facilities (*e.g.*, transmission lines);

b) Airport/seaports; dumping sites/sanitary landfills; reclamation projects;

c) Large-scale piggery and poultry projects;

d) Mining/quarrying projects;

e) National government centers;

f) Golf courses;

g) Fish ponds and aquaculture projects;

h) Cell sites and telecommunication facilities;

i) Economic zones, regional industrial centers, regional agro-industrial centers, provincial industrial centers;

j) All other industrial activities classified as high-intensity uses (1-3 Projects).

SECTION 4. Any party aggrieved, by reason of the elevation or non-elevation of any contested application by the Regional Officer, may

file a verified petition for review thereof within thirty (30) days from receipt of the notice of elevation or non-elevation of the contested application with the Executive Committee which shall resolve whether it shall assume jurisdiction thereon.

The **contested application for clearance, permit or license shall be treated as a complaint** and all other provisions of these rules on complaints not inconsistent with the preceding section shall, as far as practicable, be made applicable to oppositions except that the decision of the Board *en banc* on such contested applications shall be final and executory as provided in Rule XIX, Section 2 of these Rules, as amended.

The Rules pertaining to contested applications for license, permit or clearance shall, by analogy, apply to cases filed primarily for the revocation thereof.

x x x x

RULE XVII
Proceedings Before the Board of Commissioners

x x x x

SECTION 15. *The Executive Committee*. – The Executive Committee shall be composed of the four regular Commissioners and the *Ex-Officio* Commissioner from the Department of Justice.

x x x x

The Executive Committee shall act for the Board on policy matters, measures or proposals concerning the management and substantive administrative operations of the Board subject to ratification by the Board *en banc*, and shall assume **original jurisdiction over cases involving opposition to an application for license, permit or clearance for projects or cases impressed with significant economic, social, environmental or national policy implications or issues** in accordance with Section 2, Rule II of these Rules, as amended. It shall also approve the proposed agenda of the meetings of the Board *en banc*. (Emphases supplied.)

After the HLURB Executive Committee had rendered its Decision, the aggrieved party could still avail itself of a system of administrative appeal, also provided in the 1996 HLURB Rules of Procedure, as amended:

RULE XII
Petition for Review

SECTION 1. *Petition for Review*. – Any party aggrieved by the Decision of the Regional Officer, on any legal ground and upon payment of the review fee may file with the Regional Office a verified Petition for Review of such decision within thirty (30) calendar days from receipt

thereof. **In cases decided by the Executive Committee pursuant to Rule II, Section 2 of these Rules, as amended, the verified Petition shall be filed with the Executive Committee within thirty (30) calendar days from receipt of the Committee's Decision.** Copy of such petition shall be furnished the other party and the Board of Commissioners. No motion for reconsideration or mere notice of petition for review of the decision shall be entertained.

Within ten (10) calendar days from receipt of the petition, the Regional Officer, or the Executive Committee, as the case may be, shall elevate the records to the Board of Commissioner together with the summary of proceedings before the Regional Office. **The Petition for Review of a decision rendered by the Executive Committee shall be taken cognizance of by the Board *en banc*.**

RULE XVIII
Appeal from Board Decisions

SECTION 1. *Motion for Reconsideration.* – Within the period for filing an appeal from a Board decision, order or ruling of the Board of Commissioners, any aggrieved party may file a motion for reconsideration with the Board only on the following grounds: (1) serious errors of law which would result in grave injustice if not corrected; and (2) newly discovered evidence.

Only one (1) motion for reconsideration shall be entertained.

Motions for reconsideration shall be assigned to the division from which the decision, order or ruling originated.

SECTION 2. *Appeal.* – Any party may upon notice to the Board and the other party appeal a decision rendered by the Board of Commissioners en banc or by one of its divisions to the **Office of the President** within fifteen (15) calendar days from receipt thereof, in accordance with P.D. No. 1344 and A.O. No. 18 Series of 1987.

RULE XIX
Entry of Judgment

x x x x

SECTION 2. *Rules on Finality.* – For purposes of determining when a decision or order has become final and executory for purposes of entry in the Book of Judgment, the following shall be observed:

a. Unless otherwise provided in a decision or resolution rendered by the Regional Officer, the Executive Committee, or the Board of Commissioners, as the case may be, the orders contained therein shall become final as regards a party thirty (30) calendar days after the date of receipt thereof and no petition for review or appeal therefrom has been filed within the said period[.] (Emphases supplied.)

There is no showing that respondents availed themselves of the aforementioned administrative remedies prior to instituting Civil Case No. Br. 23-632-2000 before the RTC. While there are accepted exceptions to the principle of exhaustion of administrative remedies and the doctrine of primary jurisdiction,[30] respondents never asserted nor argued any of them. Thus, there is no cogent reason for the Court to apply the exceptions instead of the general rule to this case.

Ordinarily, failure to comply with the principle of exhaustion of administrative remedies and the doctrine of primary jurisdiction will result in the dismissal of the case for lack of cause of action. However, the Court herein will not go to the extent of entirely dismissing Civil Case No. Br. 23-632-2000. The Court does not lose sight of the fact that respondents' Complaint in Civil Case No. Br. 23-632-2000 is primarily for abatement of nuisance; and respondents alleged the lack of HLURB requirements for the cellular base station, not to seek nullification of petitioner's locational clearance, but to support their chief argument that said cellular base station is a nuisance which needs to be abated. The issue of whether or not the locational clearance for said cellular base station is valid is actually separate and distinct from the issue of whether or not the cellular base station is a nuisance; one is not necessarily determinative of the other. While the first is within the primary jurisdiction of the HLURB and, therefore, premature for the courts to rule upon in the present case, the latter is within the jurisdiction of the courts to determine but only after trial proper.

On the declaration of the Court of Appeals that petitioner's cellular base station is a nuisance that must be abated

Article 694 of the Civil Code defines nuisance as:

> ART. 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:
>
> (1) Injures or endangers the health or safety of others; or

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[30] In *Republic v. Lacap* (supra note 27 at 97-98), the Court enumerated the exceptions: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings.

> (2) Annoys or offends the senses; or
>
> (3) Shocks, defies or disregards decency or morality; or
>
> (4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; or
>
> (5) Hinders or impairs the use of property.

The term "nuisance" is so comprehensive that it has been applied to almost all ways which have interfered with the rights of the citizens, either in person, property, the enjoyment of his property, or his comfort.[31]

The Court, in *AC Enterprises, Inc. v. Frabelle Properties Corporation*,[32] settled that a simple suit for abatement of nuisance, being incapable of pecuniary estimation, is within the exclusive jurisdiction of the RTC. Although respondents also prayed for judgment for moral and exemplary damages, attorney's fees, and litigation expenses, such claims are merely incidental to or as a consequence of, their principal relief.

Nonetheless, while jurisdiction over respondents' Complaint for abatement of nuisance lies with the courts, the respective judgments of the RTC and the Court of Appeals cannot be upheld.

At the outset, the RTC erred in granting petitioner's Motion for Summary Judgment and ordering the dismissal of respondents' Complaint in Civil Case No. Br. 23-632-2000.

Summary judgments are governed by Rule 35 of the Rules of Court, pertinent provisions of which state:

> SEC. 2. *Summary judgment for defending party*. – A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, at any time, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof.
>
> SEC. 3. *Motion and proceedings thereon*. – The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the

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31 *AC Enterprises, Inc. v. Frabelle Properties Corporation*, 537 Phil. 114, 143 (2006).

32 Id. at 142-143.

> moving party is entitled to a judgment as a matter of law. (Emphases supplied.)

In *Rivera v. Solidbank Corporation*,[33] the Court discussed extensively when a summary judgment is proper:

> For a summary judgment to be proper, the movant must establish two requisites: (a) there must be no genuine issue as to any material fact, except for the amount of damages; and (b) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. Where, on the basis of the pleadings of a moving party, including documents appended thereto, no genuine issue as to a material fact exists, the burden to produce a genuine issue shifts to the opposing party. If the opposing party fails, the moving party is entitled to a summary judgment.
>
> **A genuine issue is an issue of fact which requires the presentation of evidence as distinguished from an issue which is a sham, fictitious, contrived or a false claim.** The trial court can determine a genuine issue on the basis of the pleadings, admissions, documents, affidavits or counteraffidavits submitted by the parties. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to any fact and summary judgment called for. On the other hand, **where the facts pleaded by the parties are disputed or contested, proceedings for a summary judgment cannot take the place of a trial. The evidence on record must be viewed in light most favorable to the party opposing the motion who must be given the benefit of all favorable inferences as can reasonably be drawn from the evidence.**
>
> **Courts must be critical of the papers presented by the moving party and not of the papers/documents in opposition thereto.** Conclusory assertions are insufficient to raise an issue of material fact. A party cannot create a genuine dispute of material fact through mere speculations or compilation of differences. He may not create an issue of fact through bald assertions, unsupported contentions and conclusory statements. He must do more than rely upon allegations but must come forward with specific facts in support of a claim. Where the factual context makes his claim implausible, he must come forward with more persuasive evidence demonstrating a genuine issue for trial. (Emphases supplied; citations omitted.)

Judging by the aforequoted standards, summary judgment cannot be rendered in this case as there are clearly factual issues disputed or contested by the parties. As respondents correctly argued in their Opposition to petitioner's Motion for Summary Judgment:

> 1. Contrary to the claim of [petitioner], there are several genuine issues as to the cause of action and material facts related to the complaint. For one there is an issue on the structural integrity of the

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[33] 521 Phil. 628, 648-649 (2006).

> tower, the ultra high frequency (UHF) radio wave emission radiated by the communications tower affecting the life, health and well being of the [respondents] and the barangay residents, especially their children. Also, the noxious/deleterious fumes and the noise produce[d] by the standby generator and the danger posted by the tower if it collapses in regard to life and limb as well as the property of the [respondents] particularly those whose houses abut, or are near/within the periphery of the communications tower. x x x[34]

Likewise constituting real or genuine issues for trial, which arose from subsequent events, are the following: whether the generator subject of respondents' Complaint had been removed; whether said generator had been replaced by another that produces as much or even more noise and fumes; and whether the generator is a nuisance that can be abated separately from the rest of the cellular base station.

Furthermore, the Court demonstrated in *AC Enterprises, Inc.* the extensive factual considerations of a court before it can arrive at a judgment in an action for abatement of nuisance:

> Whether or not noise emanating from a blower of the airconditioning units of the Feliza Building is nuisance is to be resolved only by the court in due course of proceedings. The plaintiff must prove that the noise is a nuisance and the consequences thereof. Noise is not a nuisance *per se*. It may be of such a character as to constitute a nuisance, even though it arises from the operation of a lawful business, only if it affects injuriously the health or comfort of ordinary people in the vicinity to an unreasonable extent. Injury to a particular person in a peculiar position or of especially sensitive characteristics will not render the noise an actionable nuisance. In the conditions of present living, noise seems inseparable from the conduct of many necessary occupations. Its presence is a nuisance in the popular sense in which that word is used, but in the absence of statute, noise becomes actionable only *when it passes the limits of reasonable adjustment to the conditions of the locality and of the needs of the maker to the needs of the listener*. What those limits are cannot be fixed by any definite measure of quantity or quality; they depend upon the circumstances of the particular case. They may be affected, but are not controlled, by zoning ordinances. The delimitation of designated areas to use for manufacturing, industry or general business is not a license to emit every noise profitably attending the conduct of any one of them.
>
> The test is whether rights of property, of health or of comfort are so injuriously affected by the noise in question that the sufferer is subjected to a loss which goes beyond the reasonable limit imposed upon him by the condition of living, or of holding property, in a particular locality in fact devoted to uses which involve the emission of noise although ordinary care is taken to confine it within reasonable bounds; or

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[34] Records, p. 82.

> in the vicinity of property of another owner who, though creating a noise, is acting with reasonable regard for the rights of those affected by it.
>
> Commercial and industrial activities which are lawful in themselves may become nuisances if they are so offensive to the senses that they render the enjoyment of life and property uncomfortable. The fact that the cause of the complaint must be substantial has often led to expressions in the opinions that to be a nuisance the noise must be deafening or loud or excessive and unreasonable. *The determining factor when noise alone is the cause of complaint is not its intensity or volume. It is that the noise is of such character as to produce actual physical discomfort and annoyance to a person of ordinary sensibilities, rendering adjacent property less comfortable and valuable. If the noise does that it can well be said to be substantial and unreasonable in degree, and reasonableness is a question of fact dependent upon all the circumstances and conditions. There can be no fixed standard as to what kind of noise constitutes a* nuisance.
>
> The courts have made it clear that in every case the question is one of reasonableness. What is a reasonable use of one's property and whether a particular use is an unreasonable invasion of another's use and enjoyment of his property so as to constitute a nuisance cannot be determined by exact rules, but must necessarily depend upon the circumstances of each case, such as locality and the character of the surroundings, the nature, utility and social value of the use, the extent and nature of the harm involved, the nature, utility and social value of the use or enjoyment invaded, and the like.
>
> Persons who live or work in thickly populated business districts must necessarily endure the usual annoyances and of those trades and businesses which are properly located and carried on in the neighborhood where they live or work. But these annoyances and discomforts must not be more than those ordinarily to be expected in the community or district, and which are incident to the lawful conduct of such trades and businesses. If they exceed what might be reasonably expected and cause unnecessary harm, then the court will grant relief.
>
> A finding by the LGU that the noise quality standards under the law have not been complied with is not a prerequisite nor constitutes indispensable evidence to prove that the defendant is or is not liable for a nuisance and for damages. Such finding is merely corroborative to the testimonial and/or other evidence to be presented by the parties. The exercise of due care by the owner of a business in its operation does not constitute a defense where, notwithstanding the same, the business as conducted, seriously affects the rights of those in its vicinity.[35] (Citations omitted.)

A reading of the RTC Order dated January 16, 2001 readily shows that the trial court did not take into account any of the foregoing

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35 *AC Enterprises, Inc. v. Frabelle Properties Corporation*, supra note 31 at 149-151.

considerations or tests before summarily dismissing Civil Case No. Br. 23-632-2000. The reasoning of the RTC that similar cellular base stations are scattered in heavily populated areas nationwide and are not declared nuisances is unacceptable. As to whether or not this specific cellular base station of petitioner is a nuisance to respondents is largely dependent on the particular factual circumstances involved in the instant case, which is exactly why a trial for threshing out disputed or contested factual issues is indispensable. Evidently, it was the RTC which engaged in speculations and unsubstantiated conclusions.

For the same reasons cited above, without presentation by the parties of evidence on the contested or disputed facts, there was no factual basis for declaring petitioner's cellular base station a nuisance and ordering petitioner to cease and desist from operating the same.

Given the equally important interests of the parties in this case, *i.e.*, on one hand, respondents' health, safety, and property, and on the other, petitioner's business interest and the public's need for accessible and better cellular mobile telephone services, the wise and prudent course to take is to remand the case to the RTC for trial and give the parties the opportunity to prove their respective factual claims.

WHEREFORE, premises considered, the instant Petition is **PARTIALLY GRANTED**. The Decision dated July 16, 2004 and Resolution dated December 9, 2004 of the Court of Appeals in CA-G.R. CV No. 71337 are **REVERSED and SET ASIDE**. Let the records of the case be **REMANDED** to the Regional Trial Court, Branch 23, of Roxas, Isabela, which is **DIRECTED** to reinstate Civil Case No. Br. 23-632-2000 to its docket and proceed with the trial and adjudication thereof with appropriate dispatch in accordance with this Decision.

SO ORDERED.

Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

LUCAS P. BERSAMIN
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice