Republic of the Philippines
Supreme Court
Manila

**THIRD DIVISION**

**REPUBLIC OF THE PHILIPPINES, represented by the NATIONAL IRRIGATION ADMINISTRATION,**
Petitioner,

- *versus* -

**SPOUSES ROGELIO LAZO and DOLORES LAZO,**
Respondents.

**G.R. No. 195594**

**Present:**

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
VILLARAMA, JR.
REYES, and
JARDELEZA, *JJ.*

**Promulgated:**

September 29, 2014

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## DECISION

**PERALTA, *J.*:**

This petition for review on *certiorari* under Rule 45 of the 1997 Revised Rules on Civil Procedure (*Rules*) seeks to annul and set aside the October 22, 2010 Decision[1] and January 31, 2011 Resolution [2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 107962, which affirmed the Order[3] dated September 17, 2008 and Supplement to the Order[4] of September 17, 2008 dated September 19, 2008 of Regional Trial Court, Branch 21, Vigan City, Ilocos Sur, granting respondents' prayer for preliminary prohibitory and mandatory injunction in Civil Case No. 6798-V for Just Compensation with Damages against petitioner.

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1 Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Manuel M. Barrios, concurring; *rollo*, pp. 50-73.
2 *Id.* at 74-76.
3 CA *rollo*, pp. 28-39.
4 *Id.* at 40.

The facts appear as follows:

Respondents spouses Rogelio Lazo and Dolores Lazo are the owners and developers of Monte Vista Homes (*Monte Vista*), a residential subdivision located in Barangay Paing, Municipality of Bantay, Ilocos Sur. Sometime in 2006, they voluntarily sold to the National Irrigation Administration (*NIA*) a portion of Monte Vista for the construction of an open irrigation canal that is part of the Banaoang Pump Irrigation Project (*BPIP*). The consideration of the negotiated sale was in a total amount of ₱27,180,000.00 at the rate of ₱2,500.00 per square meter.[5]

Subsequently, respondents engaged the services of Engr. Donno G. Custodio, retired Chief Geologist of the Mines and Geosciences Bureau-Department of Environment and Natural Resources,[6] to conduct a geohazard study on the possible effects of the BPIP on Monte Vista. Engr. Custodio later came up with a Geohazard Assessment Report (*GAR*),[7] finding that ground shaking and channel bank erosion are the possible hazards that could affect the NIA irrigation canal traversing Monte Vista. He then recommended the following:

- Construction of a two (2) or double slope retaining walls anchored to a reinforced foundation on both sides of the irrigation channel within the Monte Vista Homes Subdivision Project (Phase I & II). A buffer zone of at least 20 meters from the embankment to the nearest structure should be strictly enforced.
- Construction of a one (1) meter high concrete dike above the retaining wall to prevent surface run-off during heavy rainfall from flowing to the irrigation canal. Likewise, to prevent future residents of the subdivision from accidentally falling into the irrigation canal.
- Construction of adequate draining system along the buffer zone to prevent surface run-off during rainy season to percolate into the irrigation canal embankment and/or scour the concrete dike and retaining wall.
- Planting of ornamental trees/plants and shrubs along the buffer zone to prevent destabilization of the irrigation canal embankment and for aesthetic reasons in the area.[8]

On December 22, 2006, the *Sangguniang Bayan* of Bantay, Ilocos Sur approved Resolution No. 34, which adopted the recommendations contained in the GAR.[9] Among others, it resolved that the GAR recommendations should be observed and implemented by the concerned implementing agency of the NIA BPIP.

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5 *Rollo*, pp. 79-80.
6 CA *rollo*, p. 81.
7 *Id*. at 57-81.
8 *Id*. at 63.
9 *Rollo*, pp. 276-278.

Respondent Rogelio Lazo brought to NIA's attention Resolution No. 34 through his letters dated January 15, 2007, September 5, 2007, and November 1, 2007.[10] He specifically asked for the implementation of the GAR recommendations and the payment of just compensation for the entire buffer zone involving an aggregate area of 14,381 sq. m., more or less.

When respondents' demands were not acted upon, they decided to file a complaint for just compensation with damages against NIA on January 31, 2008.[11] Prior to the filing of an Answer, respondents filed an Amended Complaint with application for a temporary restraining order (*TRO*) and preliminary injunction.[12] They further alleged that the BPIP contractor is undertaking substandard works that increase the risk of a fatal accident.

Per Order[13] dated July 8, 2008, the trial court issued an *ex parte* 72-hour TRO and directed the NIA to appear in a summary hearing on July 9, 2008 to show cause why the injunction should not be granted. Instead of a personal appearance, the NIA, through the Office of the Solicitor General (*OSG*), filed a Manifestation and Motion[14] praying that the TRO be lifted and the application for preliminary injunction be denied for being prohibited by Republic Act. No. 8975.[15] In the July 9, 2008 hearing, the trial court ordered respondents to comment on the Manifestation and Motion (which was later on complied with)[16] and extended the TRO for 20 days from its issuance.[17]

During the July 23, 2008 hearing on respondents' prayer for provisional relief, the parties presented their respective witnesses. Engr. Jerry Zapanta, the Technical Operations Manager of the NIA-BPIP, was petitioner's sole witness, while Rogelio Lazo and Engr. Custodio testified for respondents.

Petitioner filed its Answer[18] to the Amended Complaint on August 22, 2008. After which, respondents filed a Reply.[19]

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10 CA *rollo*, pp. 85-88.
11 *Rollo*, p. 53.
12 *Id*. at 82-94.
13 *Id*. at 81.
14 *Id*. at 95-98.
15 R.A. No. 8975 is entitled as "AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS BY PROHIBITING LOWER COURTS FROM ISSUING TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS OR PRELIMINARY MANDATORY INJUNCTIONS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES."
16 *Rollo*, pp. 101-105.
17 *Id*. at 99-105.
18 *Id*. at 106-112.
19 *Id*. at 113-120.

On September 17, 2008, the trial court granted respondents' application for preliminary injunction. The dispositive portion of the Order reads:

> **WHEREFORE**, in view of all the foregoing, the application for preliminary prohibitory and mandatory injunction by plaintiffs is hereby **GRANTED**.
>
> Defendant is hereby enjoined from continuing further construction works on the irrigation canal particularly those located inside the Monte Vista Homes until the issue in the main case is resolved.
>
> Further, defendant is ordered to comply with Resolution No. 34, Series of 2006 of the Sangguniang Bayan of the Municipality of Bantay Ilocos Sur, adopting the recommendations of the Geohazard Assessment Report undertaken by Engr. Donno Custodio, unless said Resolution has been revoked, superseded or modified in such a manner that would negate compliance therewith by defendant.
>
> **SO ORDERED**.[20]

Two days later, the trial court issued a Supplement to the Order of September 17, 2008, stating:

> The dispositive portion of the Order of September 17, 2008 is supplemented with a last paragraph to read as follows:
>
> ***"The Court hereby fixes the injunction bond in the amount of THREE MILLION PESOS (Php3,000,000.00). Upon approval of the requisite bond, let the Writ of preliminary prohibitory and mandatory injunctions issue."***
>
> **SO ORDERED**.[21]

The trial court ruled that the instant case falls under the exception of Section 3 of R.A. No. 8975, because respondents' demand for just compensation is by reason of the property being burdened by the construction of the open irrigation canal in Monte Vista which altered its use and integrity. In declaring that the right of private individuals whose property were expropriated by the State is a matter of constitutional urgency, it opined:

> While [petitioner] insists that [ respondents] were fully paid for the actual area where the irrigation canal is being constructed, it refuses to compensate [respondents] for their property burdened by the construction of the irrigation canal. "Taking" in the constitutional sense may include

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20 CA *rollo*, pp. 38-39.

21 *Id*. at 40.

> trespass without actual eviction of the owner, material impairment of the property or the prevention of the ordinary use for which the property was intended. Thus, in **National Power Corporation vs. Gutierrez** *(193 SCRA 1, as cited by J. Antonio B. Nachura* in his *Outline Reviewer in Political Law, 2002 Edition, p. 37),* the Supreme Court held that the exercise of the power of eminent domain does not always result in the taking of property; it may also result in the imposition of burden upon the owner of the condemned property without loss of title or possession.
>
> It would indubitably appear in this case that there is really a necessity of appropriating more of the [respondents'] property by [petitioner] to ensure the safety and security of operating the open irrigation canal. This could never be more true in the light of the Sangguniang Bayan's Resolution [34], Series of 2006[,] which adopted the recommendations contained in the Geohazard Assessment Report. Significantly, [petitioner] never refuted that there was such a Resolution, and worse, [petitioner] never explained why it never incorporated the recommendations in the Resolution or even made an attempt to consult with the concerned Sanggunian concerning the same.[22]

Also, the trial court found that petitioner violated R.A. No. 7160, or the *Local Government Code of 1991*. It said:

> The Local Government Code embodies the policy of the State to devolve the powers and authority of a former centralized government. [Petitioner] seemed to have disregarded all deference due to the local government of the Municipality of Bantay when[,] despite the issuance of Resolution, it insisted that its design of the open irrigation canal is adequately safe without consultation or asking a formal audience with the Sangguniang Bayan and spell-out the design of the open irrigation canal which could persuade the latter to reconsider its Resolution.
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> Section 3 (g) of the Local Government Code provides that:
>
> > *"The capabilities of local government units, especially the municipalities and barangays, shall be enhanced by providing them with opportunities to participate actively in the implementation of national programs and projects;"*
>
> Section 5 of the same Code leaves no doubt as to the empowerment of local government units that it provides.
>
> > *Section 5. Rules of Interpretation. – In the interpretation of the provision of this Code, the following rules shall apply:*
> >
> > *"(a) Any provision on a power of a local government unit shall be liberally interpreted in its favor, and in case of doubt any question thereon shall be resolved in favor of devolution of powers and of the lower local government unit. Any fair and reasonable doubt as to the*

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[22] *Id*. at 32-33.

> *existence of the power shall be interpreted in favor of the local government unit concerned;" x x x*
>
> [Petitioner][,] by reason of its failure to abide by the required consultation, had effectively deprecated the function, authority and power of the Sangguniang Bayan of the Municipality of Bantay. Consequently, without the prior approbation of the Sanggunian[,] [petitioner's] irrigation project cannot be absolutely declared as representative of the consent of the local government. Hence, it must be enjoined until compliance by [petitioner] on consultative requirement or clear and convincing proof of incorporation of the Sanggunian Resolution in the project design of the irrigation project has been adduced.[23]

Without moving for a reconsideration of the two Orders, petitioner directly filed a petition for *certiorari*[24] before the CA.

On May 14, 2009, petitioner filed a Very Urgent Motion for the Issuance of a TRO and/or Writ of Preliminary Injunction.[25] In its May 27, 2009 Resolution, the CA denied the motion and directed the parties to submit their respective memoranda.[26] Accordingly, both parties filed their Memorandum.[27]

Eventually, the CA dismissed the petition and affirmed the challenged Orders of the trial court on October 22, 2010.

On procedural matters, the appellate court resolved the issues of whether petitioner failed to exhaust administrative remedies and whether the petition should be dismissed for lack of motion for reconsideration filed before the trial court. The CA opined that the controversy falls squarely within the jurisdiction of the regular courts and not of the *Sangguniang Bayan* concerned, because what petitioner seeks to nullify are the Orders of the trial court allegedly rendered in violation of R.A. No. 8975 and not the act or propriety of the issuance of Resolution No. 34. It agreed, however, with respondents that the petition for *certiorari* suffers from fatal defect since it was filed without seeking first the reconsideration of the trial court. It was said that petitioner omitted to show sufficient justification that there was no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.

As to the substantive merits of the case, the CA affirmed that the payment of just compensation and the alleged need to rectify the inferior

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23 *Id*. at 33-34.
24 *Id*. at 3-27.
25 *Id*. at 217-224.
26 *Id*. at 226-228.
27 *Id*. at 239-296.

construction work on the irrigation canal are constitutional issues which are of extreme urgency justifying the trial court's issuance of an injunctive writ. It held:

> In the controversy below, what is put in issue is the consequent just compensation as a result of the acquisition of a right-of-way for a national infrastructure project. Hence, the application of Republic Act No. 8974 which pertinently provides:
>
> > "Sec. 4. *Guidelines for Expropriation Proceedings.* – Whenever it is necessary to acquire real property for the right-of-way or location for any national government infrastructure project through expropriation, the appropriate implementing agency shall initiate the expropriation proceedings before the proper court under the following guidelines:
> >
> > > (a) Upon the filing of the complaint, and after due notice to the defendant, the implementing agency shall immediately pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined under Section 7 hereof.
> >
> > x x x x x x x x x
>
> Applying the provision in the attendant circumstances surrounding the issues in this petition, it is immediately apparent that in acquiring right-of-way for purposes of implementing a government infrastructure project and before any taking of the expropriated property may be effected, it is indispensable for the government to pay the owner of the property the amount equivalent to the sum of (1) one hundred percent (100%) of the value of the property based on the current relevant zonal valuation of the Bureau of Internal Revenue (BIR); and (2) the value of the improvements and/or structures as determined through the guidelines provided by law.
>
> And not merely by implication, petitioner cannot take over the property to be expropriated and perform act of dominion over the landowner's property without the prerequisite full payment of just compensation. The positioning of this Court takes precedence from the ruling of the Supreme Court in the landmark case of *Republic of the Philippines vs. Hon. Henrick F. Gingoyon.*
>
> x x x x
>
> Petitioner cannot seek solace to its claim that it did not expropriate respondents' property but rather purchased it through a negotiated sale. This claim can only be true to the original plan of the irrigation canal. With the issuance of Resolution No. 34, petitioner is bound to expropriate more of respondents' property for sound and safety reasons, which, unless they pay the full amount of just compensation, petitioner must be enjoined from acting as *de jure* owner thereof.

> Presently, the legal assumption would be that juridical possession of the property expropriated remains with respondents. Hence, injunction would be proper in this case.
>
> [Respondents] have proven an unmistakeable right over the property taken by NIA. They have shown, in conformity with Rule 58 of the Rules of Court which provides for the requisites before a preliminary injunction may be issued; that they are entitled to the relief absent the full payment of just compensation, and that the relief asked for petitioners to refrain from doing act of ownership over their property, and to improve the quality of the construction work on the irrigation canal. NIA, as a government expropriating agent, should refrain from continuing the acts complained of; otherwise, grave and irreparable injury would result to the prejudice of respondents.
>
> Be it noted that for a writ of preliminary injunction to be issued, the Rules of Court do not require that the act complained of be in clear violation of the rights of the applicant. Indeed, what the Rules require is that the act complained of be *probably* in violation of the rights of the applicant.[28]

Anent petitioner's non-compliance with the requirements of the Local Government Code, the CA sustained the trial court's finding:

> Under the Local Government Code, therefore, two requisites must be met before a national project that affects the environmental and ecological balance of local communities can be implemented: prior *consultation* with the affected local communities, and prior *approval* of the project by the appropriate *sanggunian*. Absent either of these mandatory requirements, the project's implementation is illegal.
>
> We can take judicial notice that the construction and operation of an irrigation canal scheme has serious and intricate environmental impact on natural, ecological and socio-economic conditions, which obviously includes lost of land use that would most certainly affect the community where it is implemented. NIA should have conducted prior consultations with the local government in consonance with the foregoing provision of R.A. 7160. Strangely, it failed to make such consultation.
>
> Petitioner suggests that the local government should have conducted a separate investigation on the aptness of the matter subject of the GAR or at least endorsed it to other appropriate government agencies for confirmation in light of the fact that the local government is dealing with NIA which is supposed to be an expert on its field. However, this Court cannot sustain a stand clearly borne out of neglect with its obligation to consult the concerned local government prior to the implementation of the irrigation project.
>
> Petitioner never even cited any statute or law which mandates the local government to conduct a separate investigation pertaining to the

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[28] *Rollo*, pp. 65-70.

> feasibility, viability or ecological repercussion of any government infrastructure project to be implemented within its territorial jurisdiction. The Constitution and Republic Act 7160 [are] adequate [sources] of the autonomous authority of local governments to determine, based on resources or references at its disposal, the soundness of a particular measure for a particular infrastructure project. It has the sole discretion to promulgate enacting ordinances to execute such measure.
>
> [Respondent] could not be persuaded to rely on the accuracy and integrity of the Back to Office Report of NIA much more than it could rely on the alleged credibility or expertise of the persons who prepared the report. Records do not show that petitioner exerted effort to present these people to establish their expertise; nor did they [make] affirmation on the contents of the Back to Office Report. Resultantly, the testimony of petitioner's witness and his allegations to support the veracity of the contents of NIA's [Back] to Office Report are mere self-serving statements and inadmissible for being hearsay.[29]

On January 31, 2011, the CA denied petitioner's motion for reconsideration; hence, this petition that raises the following issues for resolution:

> I
>
> WHETHER THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE WHICH IS NOT IN ACCORD WITH APPLICABLE LAWS AND PREVAILING JURISPRUDENCE
>
> II
>
> WHETHER THE FACTS OF THIS CASE JUSTIFIED PETITIONER'S IMMEDIATE RESORT TO THE COURT OF APPEALS WITHOUT FILING A MOTION FOR RECONSIDERATION OF THE ASSAILED ORDERS OF THE TRIAL COURT.
>
> III
>
> WHETHER REPUBLIC ACT (R.A.) NO. 7160 IS APPLICABLE TO THIS CASE.[30]

First off, the Court shall settle respondents' procedural objections, to wit: (1) petitioners did not follow the Rules when it filed a petition for *certiorari* directly with the CA without seeking for a reconsideration from the trial court; (2) the petition was filed out of time due to belated payment of docket and other lawful fees; and (3) petitioner is guilty of forum shopping.

The contentions are untenable.

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29 *Id*. at 71-72.

30 *Id*. at 22.

A petition for *certiorari* may be given due course notwithstanding that no motion for reconsideration was filed in the trial court. Although the direct filing of petitions for *certiorari* with the CA is discouraged when litigants may still resort to remedies with the trial court, the acceptance of and the grant of due course to a petition for *certiorari* is generally addressed to the sound discretion of the court because the technical provisions of the Rules may be relaxed or suspended if it will result in a manifest failure or miscarriage of justice.[31]

> The general rule is that a motion for reconsideration is a condition *sine qua non* before a petition for *certiorari* may lie, its purpose being to grant an opportunity for the court *a quo* to correct any error attributed to it by a re-examination of the legal and factual circumstances of the case.
>
> However, the rule is not absolute and jurisprudence has laid down the following exceptions when the filing of a petition for *certiorari* is proper notwithstanding the failure to file a motion for reconsideration:
>
> (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;
> (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;
> (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the petition is perishable;
> (d) where, under the circumstances, a motion for reconsideration would be useless;
> (e) where petitioner was deprived of due process and there is extreme urgency for relief;
> (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;
> (g) where the proceedings in the lower court are a nullity for lack of due process;
> (h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and,
> (i) where the issue raised is one purely of law or public interest is involved.[32]

We cannot but agree with petitioner that this case falls within instances (a), (b), (c), (d), and (i) above-mentioned. As will be elucidated in the discussion below, the assailed Orders of the trial court are patent nullity for having been issued in excess of its jurisdiction. Also, the questions raised in the *certiorari* proceedings are the same as those already raised and passed upon in the lower court; hence, filing a motion for reconsideration would be

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31 *Tan v. Bausch & Lomb, Inc.*, 514 Phil. 307, 313 (2005).

32 *HPS Software and Communication Corporation v. Philippine Long Distance Telephone Company (PLDT)*, G.R. No. 170217 and G.R. No. 170694, December 10, 2012, 687 SCRA 426, 452-453.

useless and serve no practical purpose. There is likewise an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government. In its petition and memorandum filed before the CA, petitioner in fact noted that the BPIP is intended to cater the year-round irrigation needs of 6,312 hectares of agricultural land in Bantay, Caoayan, Magsingal, San Ildefonso, San Vicente, Sto. Domingo, Sta. Catalina, and Vigan in Ilocos Sur.[33] Even Resolution No. 34 recognizes this. Public interest is actually involved as the targeted increase in agricultural production is expected to uplift the farmers' standard of living. Lastly, the issue raised – that is, under the antecedent facts, whether the trial court committed grave abuse of discretion in granting respondents' prayer for preliminary prohibitory and mandatory injunction despite the mandate of R.A. No. 8975 – is one purely of law.

The CA and this Court unquestionably have full discretionary power to take cognizance and assume jurisdiction of special civil actions for *certiorari* filed directly with it for exceptionally compelling reasons or if warranted by the nature of the issues clearly and specifically raised in the petition. We deem it proper to adopt an open-minded approach in the present case.

Also, while it has been stressed that payment of docket and other fees within the prescribed period is mandatory for the perfection of the appeal and that such payment is not a mere technicality of law or procedure,[34] the Court, in exceptional circumstances,[35] has allowed a liberal application of the Rules when the payments of the required docket fees were delayed only for a few days. Indeed, late payment of docket fees may be admitted when the party showed willingness to abide by the rules through immediate payment of the required fees.[36]

In this case, records show that petitioner timely filed its motion for extension of time to file a petition on March 2, 2011.[37] The petition, however, was not docketed because the required fees were not paid based on petitioner's belief that it is exempt therefrom. Nonetheless, payment was immediately made the following day, March 3, 2011.[38] The tardiness of petitioner is excusable since no significant period of time elapsed.

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33 *Rollo*, pp. 153, 227.

34 *D. M. Wenceslao and Associates, Inc. v. City of Parañaque*, G.R. No. 170728, August 31, 2011, 656 SCRA 369, 378.

35 *KLT Fruits, Inc. v. WSR Fruits, Inc.*, 563 Phil. 1038, 1055 (2007), citing *Mactan Cebu International Airport Authority v. Mangubat*, 371 Phil. 393 (1999) and *Villena v. Rupisan*, 549 Phil. 146 (2007).

36 See *Cu-Unjieng v. Court of Appeals*, 515 Phil. 568, 577 (2006), citing *Mactan Cebu International Airport Authority v. Mangubat, supra*.

37 *Rollo*, pp. 2-5.

38 *Id*. at 6-10.

Finally, respondents argue that the filing of a Manifestation and Motion dated March 25, 2011 by petitioner with the trial court should be considered as an act of forum shopping. They assert that the prayer to admonish them from closing or blocking the irrigation canal that traverses their property is tantamount to asking the trial court to lift the injunction order. Respondents contend that instead of pleading for a restraining order from this Court, petitioner, in effect, belatedly sought a reconsideration of the Orders dated September 17, 2008 and September 19, 2008 before the trial court.

We do not agree.

Forum shopping is committed by a party who, having received an adverse judgment in one forum, seeks another opinion in another court, other than by appeal or special civil action of certiorari.[39] It is the institution of two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes and/or to grant the same or substantially the same reliefs.[40] In a fairly recent case,[41] the Court reiterated:

> There is forum shopping "when a party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." Forum shopping is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets. An important factor in determining its existence is the vexation caused to the courts and the parties-litigants by the filing of similar cases to claim substantially the same reliefs.
>
> The test to determine the existence of forum shopping is whether the elements of *litis pendentia* are present, or whether a final judgment in one case amounts to *res judicata* in the other. Thus, there is forum shopping when the following elements are present, namely: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amounts to *res judicata* in the action under consideration.

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39 *Young v. Keng Seng*, G.R. No. 143464, March 5, 2003, 398 SCRA 629, 636.

40 *Id.*

41 *Heirs of Marcelo Sotto v. Matilde S. Palicte*, G.R. No. 159691, February 17, 2014 (1st Division Resolution).

Taking into account the surrounding circumstances, it cannot be said that petitioner's Manifestation and Motion dated March 25, 2011 constitutes forum shopping. The full text of which is quoted as follows:

**MANIFESTATION AND MOTION**

DEFENDANT, by counsel, to the Honorable Court, respectfully states:

1. On March 20, 2011, the Office of the Solicitor General (OSG) received a facsimile letter dated March 10, 2011 from the Administrator of the National Irrigation Administration (NIA) seeking legal assistance to prevent the plaintiffs from blocking the irrigation canal traversing their property which would unduly disrupt the operations of the Banaoang Pump Irrigation Project (BPIP).

x x x x

2. The above letter was precipitated by plaintiff Rogelio Lazo's threat to bar the operation of the section of the Banaoang Irrigation Canal constructed within the Monte Vista Homes as can be gleaned from the letter dated February 28, 2011 of Engr. Santiago P. Gorospe, Jr., Project Manager of the BPIP to the NIA Administrator x x x.

3. It may be recalled that the Honorable Court issued an Order dated September 17, 2008, the dispositive portion of which reads:

x x x x

4. It must be stressed that plaintiffs had been fully compensated for that portion of their property at Monte Vista Homes acquired by the NIA for its project; hence, the Republic of the Philippines is already the owner thereof. Accordingly, plaintiffs have no right whatsoever to restrain the Republic through the National Irrigation Administration, to exercise any of the attributes of its ownership. Moreover, the injunction order does not authorize plaintiffs to close or block the irrigation canal.

5. It is respectfully informed that the BPIP is now irrigating 3,300 hectares out of the 5,200 hectares irrigable service area and it is possible to irrigate the remaining area of about 1,900 hectares this next cropping season. Thus, it is very critical that the canal traversing plaintiff's property be allowed unimpeded operation to [ensure] the continued irrigation services to the farmers now depending on the BPIP.

**PRAYER**

WHEREFORE, it is respectfully prayed that plaintiffs be admonished from closing or blocking the irrigation canal traversing their property for lack of authority to do so and to await the final resolution of this case.

It is likewise prayed that defendant be granted such other reliefs as are just and equitable under the premises.

> Makati City, Metro Manila for Vigan City, Ilocos Sur, March 25, 2011.[42]

To note, the above pleading was followed by another Manifestation and Motion dated September 5, 2011, wherein petitioner further alleged:

> 5. In lieu of the hearing, defendant respectfully seeks clarification on whether the Order dated September 17, 2008 granting plaintiff's application for preliminary prohibitory and mandatory injunction grant them the power to close or block the irrigation canal constructed by the defendant. Again, it should be stressed that the construction of the irrigation canal was already completed prior to the issuance of the Order dated September 17, 2008. More importantly, the portion of plaintiff's land where the irrigation canal was constructed is already owned by the defendant prior to the institution of this case because plaintiff's had already been fully paid for it.
>
> 6. Although the import and coverage of the injunction order dated September 17, 2008 is very clear, the said clarification is imperative to put a stop to the on-and-off threat of the plaintiffs to close or block the irrigation canal, a government property, on the basis of said injunction order, to the prejudice of the farmers dependent on it for irrigation services.[43]

After cautiously reading both pleadings, it appears that petitioner honestly sought clarification from the trial court the meaning of the writ it issued. To refresh, when the trial court granted respondents' application for preliminary prohibitory and mandatory injunction on September 17, 2008 it enjoined petitioner from continuing further construction works on the irrigation canal located inside Monte Vista and ordered it to comply with Resolution No. 34, which adopted the GAR recommendations. As petitioner pointed out, the injunction order does not authorize respondents to close or block the irrigation canal, the construction of which was, as alleged, already completed prior to the issuance of the Order. In filing the Manifestation and Motion, petitioner was just protecting its property rights, claiming that it is already the owner of the land where the irrigation canal was constructed by virtue of the negotiated sale that transpired prior to the institution of this case. According to petitioner, respondents previously blocked the irrigation canal and it was only through the initiative and efforts of the affected farmers that the same was removed. Faced with another threat of closure, it only exercised its legal right to seek affirmative relief from the trial court.

Now, on the substantive merits of the case.

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42 *Rollo*, pp. 279-281.

43 *Id*. at 313.

R.A. No. 8975, which took effect on November 26, 2000,[44] is the present law that proscribes lower courts from issuing restraining orders and preliminary injunctions against government infrastructure projects. In ensuring the expeditious and efficient implementation and completion of government infrastructure projects, its twin objectives are: (1) to avoid unnecessary increase in construction, maintenance and/or repair costs; and (2) to allow the immediate enjoyment of the social and economic benefits of the project.[45] Towards these end, Sections 3 and 4 of the law provide:

> SEC. 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions*. – **No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts**:
>
> **(a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;**
>
> (b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;
>
> (c) Commencement, prosecution, execution, implementation, operation of any such contract or project;
>
> (d) Termination or rescission of any such contract/project; and
>
> (e) The undertaking or authorization of any other lawful activity necessary for such contract/project.
>
> This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. **This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.** The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.
>
> If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.
>
> SEC. 4. *Nullity of Writs and Orders*. – **Any temporary restraining order, preliminary injunction or preliminary mandatory**

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[44] *The Baguio Regreening Movement, Inc. v. Masweng*, G.R. No. 180882, February 27, 2013, 692 SCRA 109, 119-120, citing *GV Diversified International, Incorporated v. Court of Appeals*, 532 Phil. 296, 302 (2006).

[45] R.A. No. 8975, Sec. 1.

> **injunction issued in violation of Section 3 hereof is void and of no force and effect**. (Emphasis supplied)

R.A. No. 8975 exclusively reserves to this Court the power to issue injunctive writs on government infrastructure projects. A judge who violates the prohibition shall suffer the penalty of suspension of at least sixty (60) days without pay, in addition to any civil and criminal liabilities that he or she may incur under existing laws.[46] Through Administrative Circular No. 11-2000, We instructed all judges and justices of the lower courts to comply with and respect the prohibition.[47]

In the case at bar, the parties do not dispute that the Banaoang Pump Irrigation Project is a government infrastructure project within the contemplation of R.A. No. 8975. Instead, the focal issue to be resolved is: Does this case for just compensation with damages one of extreme urgency involving a constitutional issue such that unless a preliminary prohibitory and mandatory injunction is issued grave injustice and irreparable injury on the part of respondents will arise? We hold not.

Here, respondents failed to demonstrate that there is a constitutional issue involved, much less a constitutional issue that is of extreme urgency. The case aims to compel the Government to acquire more portion of Monte Vista on the bases of the GAR recommendations, which was espoused by the *Sangguniang Bayan* of Bantay, Ilocos Sur, and of the alleged substandard works on the BPIP. The findings in the GAR, however, are vehemently opposed by petitioner. It asserted that the 20-meter buffer zone is unnecessary because similar precautionary measures are already sufficiently installed and that further acquisition of respondents' property would be grossly disadvantageous to the Government as it would cost additional ₱68,370,000.00, more or less. Petitioner also counters that the claim of substandard works on the BPIP is speculative, since the contractor has not yet handed over the BPIP as completed and petitioner is yet to inspect and approve the BPIP according to its design and specifications. Considering that these issues are very much disputed by the parties, it cannot be said that respondents' constitutional right to just compensation was or has already been breached at the time the complaint was filed or even during the hearing on their application for preliminary injunction.

As petitioner consistently argues, it has not taken any property of respondents that is more than what was the subject matter of the negotiated sale executed in 2006. Quite the contrary, it is respondents who are obliging it to purchase more than what it deems as necessary for the implementation

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[46] R.A. No. 8975, Sec. 6.

[47] *Nerwin Industries Corporation v. PNOC-Energy Development Corporation*, G.R. No. 167057, April 11, 2012, 669 SCRA 173, 183.

of the BPIP. In general, however, a property-owner like respondents has no right to unilaterally determine the extent of his or her property that should be acquired by the State or to compel it to acquire beyond what is needed, the conformity of a higher authority like the *Sanggunian Bayan* notwithstanding. Similar to cases of voluntary offer to sell (*VOS*) a property to the Department of Agrarian Reform (*DAR*) for coverage under R.A. No. 6657 or the Comprehensive Agrarian Reform Law,[48] the Government cannot be forced to buy land which it finds no necessity for considering that, in the ultimate analysis, an appropriation of limited government funds is involved. Like the DAR, the NIA has the power to determine whether a parcel of land is needed for the BPIP. Truly, due recognition must be made that the NIA is an administrative body with expertise on matters within its specific and specialized jurisdiction. Presumption of regularity in the performance of its official duty should be accorded. As this Court held in *Republic v. Nolasco*:[49]

> More importantly, the Court, the parties, and the public at large are bound to respect the fact that official acts of the Government, including those performed by governmental agencies such as the DPWH, are clothed with the presumption of regularity in the performance of official duty, and cannot be summarily, prematurely and capriciously set aside. Such presumption is operative not only upon the courts, but on all persons, especially on those who deal with the government on a frequent basis. There is perhaps a more cynical attitude fostered within the popular culture, or even through anecdotal traditions. Yet, such default pessimism is not embodied in our system of laws, which presumes that the State and its elements act correctly unless otherwise proven. To infuse within our legal philosophy a contrary, gloomy pessimism would assure that the State would bog down, wither and die.
>
> Instead, our legal framework allows the pursuit of remedies against errors of the State or its components available to those entitled by reason of damage or injury sustained. Such litigation involves demonstration of legal capacity to sue or be sued, **an exhaustive trial on the merits, and adjudication that has basis in duly proven facts and law**. x x x[50]

While the Court concurs with the trial court's pronouncement that the exercise of the power of eminent domain does not always result in the taking of property as it may only result in the imposition of burden upon the owner of the condemned property without loss of title or possession, We do not agree with its finding, after the conduct of a one-day hearing relative to the prayer for provisional relief, that there is real necessity of appropriating more of the respondents' property by petitioner to ensure the safety and security of operating the open irrigation canal. The allegation that respondents will stand to suffer damages by NIA's non-acquisition of

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48 See *Land Bank of the Philippines v. Montalvan*, G.R. No. 190336, June 27, 2012, 675 SCRA 380 and *Land Bank of the Philippines v. Colarina*, G.R. No. 176410, September 1, 2010, 629 SCRA, 614.

49 496 Phil. 853 (2005).

50 *Republic v. Nolasco*, *supra*, at 883-884. (Emphasis supplied)

additional land in Monte Vista is evidentiary in nature requiring full blown trial on the merits. In the same vein, the CA likewise erred when it improperly took judicial notice that "the construction and operation of an irrigation canal scheme has serious and intricate environmental impact on natural, ecological and socio-economic conditions, which obviously includes lost of land use that would most certainly affect the community where it is implemented" so as to sustain the trial court's ruling.

Respondents cannot conveniently invoke the *NAPOCOR* cases[51] in order to support their prayer for preliminary injunction. Therein, the Court consistently ruled that expropriation is not limited to the acquisition of real property with a corresponding transfer of title or possession and that the right-of-way easement resulting in a restriction or limitation on property rights over the land traversed by transmission lines also falls within the ambit of the term "expropriation." In contrast, this case obviously does not deal with the installation power lines, which has different nature and effects on private ownership. The perpetual deprivation of the normal and ordinary use of the complainants' proprietary rights, the danger to life and limbs, and the tax implications which were uniformly considered in the *NAPOCOR* cases are relatively not palpable in this case.

As regards petitioner's alleged violation of the Local Government Code, the same does not suffice to grant the prayer for injunctive relief.

Section 2(c) of the Local Government Code declares the policy of the State "to require all national agencies and offices to conduct periodic consultations with appropriate local government units, non-governmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions." This provision applies to national government projects affecting the environmental or ecological balance of the particular community implementing the project.[52] Exactly, Sections 26 and 27 of the Local Government Code requires prior consultations with the concerned sectors and the prior approval of the *Sanggunian*. It was said that the Congress introduced these provisions to emphasize the legislative concern "for the maintenance of a sound ecology and clean environment."[53]

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51 See *National Power Corporation v. Maruhom*, G.R. No. 183297, December 23, 2009, 609 SCRA 198; *National Power Corporation v. Ong Co*, 598 Phil. 58 (2009); *National Power Corp. v. Vda. De Capin, et al.*, 590 Phil. 665 (2008); *National Power Corporation v. San Pedro*, 534 Phil. 448 (2006); *NPC v. Manubay Agro-Industrial Development Corp.*, 480 Phil. 470 (2004); and *National Power Corporation v. Spouses Gutierrez*, 231 Phil. 1 (1999);

52 *Province of Rizal v. Executive Secretary*, 513 Phil. 557, 589 (2005).

53 *Bangus Fry Fisherfolk v. Judge Lanzanas*, 453 Phil. 479, 496 (2003).

Sections 26 and 27 provide:

> Section 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance.* - It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.
>
> Section 27. *Prior Consultations Required.* - No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the *sanggunian* concerned is obtained: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

The projects and programs mentioned in Section 27 should be interpreted to mean projects and programs whose effects are among those enumerated in Section 26 and 27, to wit, those that: (1) may cause pollution; (2) may bring about climatic change; (3) may cause the depletion of non-renewable resources; (4) may result in loss of crop land, range-land, or forest cover; (5) may eradicate certain animal or plant species from the face of the planet; and (6) other projects or programs that may call for the eviction of a particular group of people residing in the locality where these will be implemented.[54] Preliminarily, it appears that the present case does not fall under any of these instances; *ergo*, there is neither a need for prior consultations of concerned sectors nor prior approval of the *Sanggunian*.

In support of their entitlement to a preliminary injunction, respondents insist that the non-observance of the buffer zones and other GAR recommendations will spell calamitous consequences to the future occupants of Monte Vista and tragic disaster to the community of the Municipality of Bantay. Allegedly, the worst scenario of such malfeasance, if not immediately enjoined, is the "devastating irreversible ecological and environmental effects to the community."[55] According to them, petitioner "opted to pursue a treacherous task which could well endanger the community and its people with threats of perishing through inundation or

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[54] *Hon. Lina , Jr. v. Hon. Paño*, 416 Phil. 438, 450 (2001), as cited in *Boracay Foundation, Inc. v. Province of Aklan*, G.R. No. 196870, June 26, 2012, 674 SCRA 555, 616-617; *Province of Rizal v. Executive Secretary*, *supra*, note 52, at 590; and *Bangus Fry Fisherfolk v. Judge Lanzanas*, *supra*, at 497-498.

[55] *Rollo*, pp. 91, 270.

deluge of mythical proportion, or through avalanche of mud and soil."[56] Yet in spite of advancing these gruesome depictions, it is surprising to note that respondents apprised the Court that they "never really prevented petitioner from finishing the construction of the BPIP canal and even allowed its operation in deference to the broader interests of the farmer-beneficiaries of the irrigation project until the issues are finally adjudicated."[57] This admission only proves that respondents' arguments are mere suppositions which, as of the time the provisional remedy was heard and granted, are bereft of undisputed factual moorings. Certainly, there is no clear and material right of respondents to be protected. There are no rights *in esse* since the allegations are merely contingent and may never arise at all. These are not rights clearly founded on or granted by law or is enforceable as a matter of law. There is no ostensible right to the final relief prayed for in their complaint.

Respondents failed to satisfy even the basic requirements of the Rules for the issuance of a preliminary injunction.[58] Therefore, the trial court

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[56] *Id*. at 89, 185, 259.

[57] *Id*. at 246.

[58] The procedural and jurisprudential guideposts in the issuance of preliminary injunction are amply discussed in *Nerwin Industries Corporation v. PNOC-Energy Development Corporation* (G.R. No. 167057, April 11, 2012, 669 SCRA 173, [186-189]):

> A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or person, to refrain from a particular act or acts. It is an ancillary or preventive remedy resorted to by a litigant to protect or preserve his rights or interests during the pendency of the case. As such, it is issued only when it is established that:
>
> *(a)* The applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually; or
>
> *(b)* The commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
>
> *(c)* A party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.
>
> The existence of a right to be protected by the injunctive relief is indispensable. In *City Government of Butuan v. Consolidated Broadcasting System (CBS), Inc.*, the Court elaborated on this requirement, *viz.*:
>
> > "As with all equitable remedies, injunction must be issued only at the instance of a party who possesses sufficient interest in or title to the right or the property sought to be protected. It is proper only when the applicant appears to be entitled to the relief demanded in the complaint, which must aver the existence of the right and the violation of the right, or whose averments must in the minimum constitute a *prima facie* showing of a right to the final relief sought. Accordingly, the conditions for the issuance of the injunctive writ are: (a) that the right to be protected exists *prima facie*; (b) that the act sought to be enjoined is violative of that right; and (c) that there is an urgent and paramount necessity for the writ to prevent serious damage. **An injunction will not issue to protect a right not *in esse*, or a right which is merely contingent and may never arise; or to restrain an act which does not give rise to a cause of action; or to prevent the perpetration of an act prohibited by statute. Indeed, a right, to be protected by injunction, means a right clearly founded on or granted by law or is enforceable as a matter of law**."
>
> Conclusive proof of the existence of the right to be protected is not demanded, however, for, as the Court has held in *Saulog v. Court of Appeals*, it is enough that:

gravely abused its discretion when it granted their application for

> "xxx for the court to act, **there must be an existing basis of facts affording a present right which is directly threatened by an act sought to be enjoined. And while a clear showing of the right claimed is necessary, its existence need not be conclusively established.** In fact, the evidence to be submitted to justify preliminary injunction at the hearing thereon need not be conclusive or complete but need only be a "sampling" intended merely to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits. **This should really be so since our concern here involves only the propriety of the preliminary injunction and not the merits of the case still pending with the trial court.**
>
> Thus, to be entitled to the writ of preliminary injunction, the private respondent needs only to show that it has the **ostensible right to the final relief prayed for in its complaint** xxx."

In this regard, the *Rules of Court* grants a broad latitude to the trial courts considering that conflicting claims in an application for a provisional writ more often than not involve and require a factual determination that is not the function of the appellate courts. Nonetheless, the exercise of such discretion must be sound, *that is*, the issuance of the writ, though discretionary, should be upon the grounds and in the manner provided by law. When that is done, the exercise of sound discretion by the issuing court in injunctive matters must not be interfered with except when there is manifest abuse.

Moreover, judges dealing with applications for the injunctive relief ought to be wary of improvidently or unwarrantedly issuing TROs or writs of injunction that tend to dispose of the merits without or before trial. Granting an application for the relief in disregard of that tendency is judicially impermissible, for it is never the function of a TRO or preliminary injunction to determine the merits of a case, or to decide controverted facts. It is but a preventive remedy whose only mission is to prevent threatened wrong, further injury, and irreparable harm or injustice *until the rights of the parties can be settled.* Judges should thus look at such relief only as a means to protect the ability of their courts to render a meaningful decision. Foremost in their minds should be to guard against a change of circumstances that will hamper or prevent the granting of proper reliefs after a trial on the merits. It is well worth remembering that the writ of preliminary injunction should issue only to prevent the threatened continuous and irremediable injury to the applicant before the claim can be justly and thoroughly studied and adjudicated.

As to the requirements of a preliminary mandatory injunction, *Heirs of Yu v. Honorable Court of Appeals, Special Twenty-First Division (Twenty-Second Division)* (G.R. No. 182371, September 4, 2013, 705 SCRA 84 [95-96]) has this to say:

> A preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts. It may also require the performance of a particular act or acts, in which case it shall be known as a preliminary mandatory injunction. To justify the issuance of a writ of preliminary mandatory injunction, it must be shown that: (1) the complainant has a clear legal right; (2) such right has been violated and the invasion by the other party is material and substantial; and (3) there is an urgent and permanent necessity for the writ to prevent serious damage. An injunction will not issue to protect a right not *in esse*, or a right which is merely contingent and may never arise since, to be protected by injunction, the alleged right must be clearly founded on or granted by law or is enforceable as a matter of law. As this Court opined in *Dela Rosa v. Heirs of Juan Valdez*:
>
> > A preliminary mandatory injunction is more cautiously regarded than a mere prohibitive injunction since, more than its function of preserving the *status quo* between the parties, it also commands the performance of an act. Accordingly, the issuance of a writ of preliminary mandatory injunction is justified only in a clear case, free from doubt or dispute. When the complainant's right is doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of a writ of preliminary mandatory injunction is improper. While it is not required that the right claimed by applicant, as basis for seeking injunctive relief, be conclusively established, it is still necessary to show, at least tentatively, that the right exists and is not vitiated by any substantial challenge or contradiction.
> >
> > Thus, a preliminary mandatory injunction should only be granted "in cases of extreme urgency; where the right is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a continuing one; and where the effect of the mandatory injunction is rather to re-establish and maintain a pre-existing continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation."

preliminary prohibitory and mandatory injunction. In so doing, it prematurely decided disputed facts and effectively disposed of the merits of the case without the benefit of a full blown trial wherein testimonial and documentary evidence could be fully and exhaustively presented, heard, and refuted by the parties.

> The prevailing rule is that the courts should avoid issuing a writ of preliminary injunction that would in effect dispose of the main case without trial. Otherwise, there would be a prejudgment of the main case and a reversal of the rule on the burden of proof since it would assume the proposition which petitioners are inceptively bound to prove. Indeed, a complaint for injunctive relief must be construed strictly against the pleader.[59]

The Court is more inclined to believe that respondents filed the instant complaint merely to protect their own private interests. The claim of alleged effects on the environmental or ecological balance of Monte Vista and the Municipality of Bantay is but a legal tactic to give an impression that the case has urgent constitutional repercussions. As a matter of fact, their pleadings unfailingly manifest their true intent. Respondents vigorously contend that the BPIP would jeopardize the entire development of Monte Vista, which was earmarked for the development of a residential subdivision; that when the BPIP commenced construction, the suitability and marketability of Monte Vista already seriously suffered; and that, in building the BPIP that has substandard specifications, petitioner and its contractor are likely converting the remaining areas of Monte Vista not suitable and viable for subdivision project. Respondents admitted that they are having difficulty selling all the other lots in Monte Vista allegedly because of the people's awareness that the irrigation canal is unstable and does not comply with the GAR recommendations as adopted by the *Sangguniang Bayan*. They claim that prospective clients either withdrew from the sale or veered away from Monte Vista for fear of being considered as part of the statistics if the subdivision is deluged by the overflow of a substandard irrigation canal. As for those who already purchased a lot, it is claimed that they now remonstrate to be relocated as far as possible from the irrigation canal.

Respondents suppose that they deserve additional compensation not only for the buffer zone to be allocated for the stability and safety operation of the irrigation canal but for the damage it has caused by rendering Monte Vista perceived as less ideal for residential location.[60] The just compensation they are asking is for the actual area taken by petitioner for the BPIP and those allegedly burdened and rendered of no use to respondents as a consequence of the required buffer zones and affected by the purported

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[59] *Phil. Ports Authority v. Pier 8 Arrastre & Stevedoring Services, Inc.*, 512 Phil. 74, 90-91 (2005). (Citations omitted)

[60] *Rollo*, pp. 118-119.

substandard work of the irrigation canal. Respondents believe that there is "taking" in the constitutional sense of portions of Monte Vista which is more than that which petitioner originally declared as required by BPIP. Again, We do not think so.

Nevertheless, this Court emphasizes that this Decision is limited to the issue of propriety of the issuance of a writ of preliminary prohibitory and mandatory injunction as an interim relief under the peculiar factual milieu of this case. As the substantive issues presented and disputed by the parties are not finally resolved, We leave them to the trial court for resolution after trial on the merits.

**WHEREFORE,** premises considered, the Petition is **GRANTED**. The October 22, 2010 Decision and January 31, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 107962 are **REVERSED AND SET ASIDE**. The Order dated September 17, 2008 and Supplement to the Order of September 17, 2008 dated September 19, 2008 of Regional Trial Court, Branch 21, Vigan City, Ilocos Sur, which granted respondents' application for preliminary prohibitory and mandatory injunction in Civil Case No. 6798-V for Just Compensation with Damages, are **DECLARED VOID AND OF NO FORCE AND EFFECT**.

**SO ORDERED.**

**DIOSDADO M. PERALTA**
Associate Justice

**WE CONCUR:**

**PRESBITERO J. VELASCO, JR.**
Associate Justice
Chairperson

**MARTIN S. VILLARAMA, JR.**
Associate Justice

**BIENVENIDO L. REYES**
Associate Justice

**FRANCIS H. JARDELEZA**
Associate Justice

## ATTESTATION

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

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

## CERTIFICATION

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

**ANTONIO T. CARPIO**
Acting Chief Justice