Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

CRISOSTOMO B. AQUINO, Petitioner,	**G.R. No. 211356**
- versus -	Present:
MUNICIPALITY OF MALAY, AKLAN, represented by HON. MAYOR JOHN P. YAP, SANGGUNIANG BAYAN OF MALAY, AKLAN, represented by HON. EZEL FLORES, DANTE PASUGUIRON, ROWEN AGUIRRE, WILBEC GELITO, JUPITER GALLENERO, OFFICE OF THE MUNICIPAL ENGINEER, OFFICE OF THE MUNICIPAL TREASURER, BORACAY PNP CHIEF, BORACAY FOUNDATION, INC., represented by NENETTE GRAF, MUNICIPAL AUXILIARY POLICE, and JOHN and JANE DOES, Respondents.	VELASCO, JR., *J.*, Chairperson, PERALTA, VILLARAMA, JR., REYES, and JARDELEZA, *JJ.* Promulgated: September 29, 2014

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D E C I S I O N

VELASCO, JR., *J.*:

Nature of the Case

Before the Court is a Petition for Review on Certiorari challenging the Decision[1] and the Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 120042 dated August 13, 2013 and February 3, 2014, respectively. The assailed rulings denied Crisostomo Aquino's Petition for Certiorari for not being the proper remedy to question the issuance and implementation of Executive Order No. 10, Series of 2011 (EO 10), ordering the demolition of his hotel establishment.

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[1] *Rollo*, pp. 49-60. Penned by Associate Justice Carmelita Salandanan-Manahan and concurred in by Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla.

The Facts

Petitioner is the president and chief executive officer of Boracay Island West Cove Management Philippines, Inc. (Boracay West Cove). On January 7, 2010, the company applied for a zoning compliance with the municipal government of Malay, Aklan.[2] While the company was already operating a resort in the area, the application sought the issuance of a building permit covering the construction of a three-storey hotel over a parcel of land measuring 998 sqm. located in Sitio Diniwid, Barangay Balagab, Boracay Island, Malay, Aklan, which is covered by a Forest Land Use Agreement for Tourism Purposes (FLAgT) issued by the Department of Environment and Natural Resources (DENR) in favor of Boracay West Cove.

Through a Decision on Zoning dated January 20, 2010, the Municipal Zoning Administrator denied petitioner's application on the ground that the proposed construction site was within the "no build zone" demarcated in Municipal Ordinance 2000-131 (Ordinance).[3] As provided in the Ordinance:

> SECTION 2. – Definition of Terms. As used in this Ordinance, the following words, terms and phrases shall mean as follows:
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> x x x x
>
> (b) No Build Zone – the space twenty-five (25) meters from the edge of the mean high water mark measured inland;
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> x x x x
>
> SECTION 3. – No building or structure of any kind whether temporary or permanent shall be allowed to be set up, erected or constructed on the beaches around the Island of Boracay and in its offshore waters. During the conduct of special activities or special events, the Sangguniang Bayan may, through a Resolution, authorize the Office of the Mayor to issue Special Permits for construction of temporary structures on the beach for the duration of the special activity as embodied in the Resolution.

In due time, petitioner appealed the denial action to the Office of the Mayor on February 1, 2010.

On May 13, 2010, petitioner followed up his appeal through a letter but no action was ever taken by the respondent mayor. On April 5, 2011, however, a Notice of Assessment was sent to petitioner asking for the settlement of Boracay West Cove's unpaid taxes and other liabilities under pain of a recommendation for closure in view of its continuous commercial operation since 2009 sans the necessary zoning clearance, building permit, and business and mayor's permit. In reply, petitioner expressed willingness to settle the company's obligations, but the municipal treasurer refused to

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[2] Id. at 65.
[3] Id. at 196-198.

accept the tendered payment. Meanwhile, petitioner continued with the construction, expansion, and operation of the resort hotel.

Subsequently, on March 28, 2011, a Cease and Desist Order was issued by the municipal government, enjoining the expansion of the resort, and on June 7, 2011, the Office of the Mayor of Malay, Aklan issued the assailed EO 10, ordering the closure and demolition of Boracay West Cove's hotel.

EO 10 was partially implemented on June 10, 2011. Thereafter, two more instances followed wherein respondents demolished the improvements introduced by Boracay West Cove, the most recent of which was made in February 2014.

Alleging that the order was issued and executed with grave abuse of discretion, petitioner filed a Petition for Certiorari with prayer for injunctive relief with the CA. He argued that judicial proceedings should first be conducted before the respondent mayor could order the demolition of the company's establishment; that Boracay West Cove was granted a FLAgT by the DENR, which bestowed the company the right to construct permanent improvements on the area in question; that since the area is a forestland, it is the DENR—and not the municipality of Malay, or any other local government unit for that matter—that has primary jurisdiction over the area, and that the Regional Executive Director of DENR-Region 6 had officially issued an opinion regarding the legal issues involved in the present case; that the Ordinance admits of exceptions; and lastly, that it is the mayor who should be blamed for not issuing the necessary clearances in the company's favor.

In rebuttal, respondents contended that the FLAgT does not excuse the company from complying with the Ordinance and Presidential Decree No. 1096 (PD 1096), otherwise known as the National Building Code of the Philippines. Respondents also argued that the demolition needed no court order because the municipal mayor has the express power under the Local Government Code (LGC) to order the removal of illegally constructed buildings.

Ruling of the Court of Appeals

In its assailed Decision dated August 13, 2013, the CA dismissed the petition solely on procedural ground, i.e., the special writ of certiorari can only be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions and since the issuance of EO 10 was done in the exercise of executive functions, and not of judicial or quasi-judicial functions, certiorari will not lie. Instead, the proper remedy for the petitioner, according to the CA, is to file a petition for declaratory relief with the Regional Trial Court.

Petitioner sought reconsideration but this was denied by the CA on February 3, 2014 through the challenged Resolution. Hence, the instant petition raising arguments on both procedure and substance.

The Issues

Stripped to the essentials, the pivotal issues in the extant case are as follows:

1. **The propriety under the premises of the filing of a petition for certiorari instead of a petition for declaratory relief;**

    a. Whether or not declaratory relief is still available to petitioner;
    b. Whether or not the CA correctly ruled that the respondent mayor was performing neither a judicial nor quasi-judicial function when he ordered the closure and demolition of Boracay West Cove's hotel;

2. **Whether or not respondent mayor committed grave abuse of discretion when he issued EO 10;**

    a. Whether or not petitioner's right to due process was violated when the respondent mayor ordered the closure and demolition of Boracay West Cove's hotel without first conducting judicial proceedings;
    b. Whether or not the LGU's refusal to issue petitioner the necessary building permit and clearances was justified;
    c. Whether or not petitioner's rights under the FLAgT prevail over the municipal ordinance providing for a no-build zone; and
    d. Whether or not the DENR has primary jurisdiction over the controversy, not the LGU.

The Court's Ruling

We deny the petition.

Certiorari, not declaratory relief, is the proper remedy

a. Declaratory relief no longer viable

Resolving first the procedural aspect of the case, We find merit in petitioner's contention that the special writ of certiorari, and not declaratory relief, is the proper remedy for assailing EO 10. As provided under Sec. 1, Rule 63 of the Rules of Court:

> SECTION 1. Who may file petition. – Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance or any other governmental regulation may, **before breach or violation** thereof, bring an action in the

> appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. x x x (emphasis added)

An action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of the rights arising thereunder. Since the purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, and not to settle issues arising from an alleged breach thereof, it may be entertained before the breach or violation of the statute, deed or contract to which it refers. A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.[4]

In the case at bar, the petition for declaratory relief became unavailable by EO 10's enforcement and implementation. The closure and demolition of the hotel rendered futile any possible guidelines that may be issued by the trial court for carrying out the directives in the challenged EO 10. Indubitably, the CA erred when it ruled that declaratory relief is the proper remedy given such a situation.

b. Petitioner correctly resorted to certiorari

On the propriety of filing a petition for certiorari, Sec. 1, Rule 65 of the Rules of Court provides:

> Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. x x x

For certiorari to prosper, the petitioner must establish the concurrence of the following requisites, namely:

1. The writ is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions;
2. Such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and

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[4] *Phil-Ville Development and Housing Corporation v. Bonifacio*, G.R. No. 167391, June 8, 2011, 631 SCRA 327, 350-351.

3. There is no appeal or any plain speedy, and adequate remedy in the ordinary course of law.[5]

Guilty of reiteration, the CA immediately dismissed the Petition for Certiorari upon determining that the first element is wanting—that respondent mayor was allegedly not exercising judicial or quasi-judicial functions when he issued EO 10.

We are not persuaded.

The CA fell into a trap when it ruled that a mayor, an officer from the executive department, exercises an executive function whenever he issues an Executive Order. This is tad too presumptive for it is the nature of the act to be performed, rather than of the office, board, or body which performs it, that determines whether or not a particular act is a discharge of judicial or quasi-judicial functions. The first requirement for certiorari is satisfied if the officers act judicially in making their decision, whatever may be their public character.[6]

It is not essential that the challenged proceedings should be strictly and technically judicial, in the sense in which that word is used when applied to courts of justice, but it is sufficient if they are quasi-judicial.[7] To contrast, a party is said to be exercising a *judicial function* where he has the power to determine what the law is and what legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties, whereas *quasi-judicial function* is "a term which applies to the actions, discretion, etc., of public administrative officers or bodies x x x required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature."[8]

In the case at bench, the assailed EO 10 was issued upon the respondent mayor's finding that Boracay West Cove's construction, expansion, and operation of its hotel in Malay, Aklan is illegal. Such a finding of illegality required the respondent mayor's exercise of quasi-judicial functions, against which the special writ of certiorari may lie. Apropos hereto is Our ruling in *City Engineer of Baguio v. Baniqued*:[9]

> There is no gainsaying that a city mayor is an executive official nor is the matter of issuing demolition notices or orders not a ministerial one. In determining whether or not a structure is illegal or it should be demolished, property rights are involved thereby needing notices and opportunity to be heard as provided for in the constitutionally guaranteed right of due process. In pursuit of these functions, the city mayor has to exercise quasi-judicial powers.

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[5] *Yusay v. Court of Appeals*, G.R. No. 156684, April 6, 2011, 647 SCRA 269, 276-277.

[6] *The Municipal Council of Lemery, Batangas v. The Provincial Board of Batangas*, 56 Phil. 260 (1931).

[7] Id.

[8] *Galicto v. Aquino*, G.R. No. 193978, February 28, 2012, 667 SCRA 150, 167.

[9] G.R. No. 150270, November 26, 2008, 571 SCRA 617, 633.

With the foregoing discussion, the CA erred in ruling that the respondent mayor was merely exercising his executive functions, for clearly, the first requisite for the special writ has been satisfied.

Aside from the first requisite, We likewise hold that the third element, i.e., the unavailability of a plain, speedy, or adequate remedy, is also present herein. While it may be argued that, under the LGC, Executive Orders issued by mayors are subject to review by provincial governors,[10] this cannot be considered as an adequate remedy given the exigencies of petitioner's predicament.

In a litany of cases, We have held that it is inadequacy, not the mere absence of all other legal remedies and the danger of failure of justice without the writ, that must usually determine the propriety of certiorari. A remedy is plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment, order, or resolution of the lower court or agency. It is understood, then, that a litigant need not mark time by resorting to the less speedy remedy of appeal in order to have an order annulled and set aside for being patently void for failure of the trial court to comply with the Rules of Court.[11]

Before applying this doctrine, it must first be borne in mind that respondents in this case have already taken measures towards implementing EO 10. In fact, substantial segments of the hotel have already been demolished pursuant to the mayor's directive. It is then understandable why petitioner prayed for the issuance of an injunctive writ—a provisional remedy that would otherwise have been unavailable had he sought a reversal from the office of the provincial governor of Aklan. Evidently, petitioner correctly saw the urgent need for judicial intervention via certiorari.

In light of the foregoing, the CA should have proceeded to grab the bull by its horns and determine the existence of the second element of certiorari—whether or not there was grave abuse of discretion on the part of respondents.

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[10] **Section 30.** Review of Executive Orders. -

(a) Except as otherwise provided under the Constitution and special statutes, the governor shall review all executive orders promulgated by the component city or municipal mayor within his jurisdiction. The city or municipal mayor shall review all executive orders promulgated by the punong barangay within his jurisdiction. Copies of such orders shall be forwarded to the governor or the city or municipal mayor, as the case may be, within three (3) days from their issuance. In all instances of review, the local chief executive concerned shall ensure that such executive orders are within the powers granted by law and in conformity with provincial, city, or municipal ordinances.

(b) If the governor or the city or municipal mayor fails to act on said executive orders within thirty (30) days after their submission, the same shall be deemed consistent with law and therefore valid.

[11] *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*, G.R. No. 159941, August 17, 2011, 655 SCRA 580, 594-595; citing *Jaca v. Davao Lumber Company*, G.R. No. L-25771, March 29, 1982, 113 SCRA 107, 129, *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission*, G.R. No. 144322, February 6, 2007, 514 SCRA 346, and *Lu Ym v. Nabua*, G.R. No. 161309, February 23, 2005, 452 SCRA 298, 311.

Upon Our finding that a petition for certiorari under Rule 65 is the appropriate remedy, We will proceed to resolve the core issues in view of the urgency of the reliefs prayed for in the petition.

Respondents did not commit grave abuse of discretion

a. The hotel's classification as a nuisance

Article 694 of the Civil Code defines "nuisance" as any act, omission, establishment, business, condition or property, or anything else that (1) injures or endangers the health or safety of others; (2) annoys or offends the senses; (3) shocks, defies or disregards decency or morality; (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.[12]

In establishing a no build zone through local legislation, the LGU effectively made a determination that constructions therein, without first securing exemptions from the local council, qualify as nuisances for they pose a threat to public safety. No build zones are intended for the protection of the public because the stability of the ground's foundation is adversely affected by the nearby body of water. The ever present threat of high rising storm surges also justifies the ban on permanent constructions near the shoreline. Indeed, the area's exposure to potential geo-hazards cannot be ignored and ample protection to the residents of Malay, Aklan should be afforded.

Challenging the validity of the public respondents' actuations, petitioner posits that the hotel cannot summarily be abated because it is not a nuisance *per se*, given the hundred million peso-worth of capital infused in the venture. Citing *Asilo, Jr. v. People*,[13] petitioner also argues that respondents should have first secured a court order before proceeding with the demolition.

Preliminarily, We agree with petitioner's posture that the property involved cannot be classified as a nuisance *per se*, but not for the reason he so offers. Property valuation, after all, is not the litmus test for such a determination. More controlling is the property's nature and conditions, which should be evaluated to see if it qualifies as a nuisance as defined under the law.

As jurisprudence elucidates, nuisances are of two kinds: nuisance *per se* and nuisance *per accidens*. The first is recognized as a nuisance under any and all circumstances, because it constitutes a direct menace to public health or safety, and, for that reason, may be abated summarily under the undefined law of necessity. The second is that which depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be

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[12] *Gancayo v. City Government of Quezon*, G.R. No. 177807, October 11, 2011, 658 SCRA 853, 867.

[13] G.R. Nos. 159017-18, 159059, March 9, 2011, 645 SCRA 41.

abated without due hearing thereon in a tribunal authorized to decide whether such a thing does in law constitute a nuisance.[14]

In the case at bar, the hotel, in itself, cannot be considered as a nuisance *per se* since this type of nuisance is generally defined as an act, occupation, or **structure**, which is **a nuisance at all times** and under any circumstances, **regardless of location** or surrounding.[15] Here, it is merely the hotel's particular incident—its location—and not its inherent qualities that rendered it a nuisance. Otherwise stated, had it not been constructed in the no build zone, Boracay West Cove could have secured the necessary permits without issue. As such, petitioner is correct that the hotel is not a nuisance *per se*, but to Our mind, it is still a nuisance *per accidens*.

b. Respondent mayor has the power to order the demolition of illegal constructions

Generally, LGUs have no power to declare a particular thing as a nuisance unless such a thing is a nuisance *per se*.[16] So it was held in *AC Enterprises v. Frabelle Properties Corp*:[17]

> We agree with petitioner's contention that, under Section 447(a)(3)(i) of R.A. No. 7160, otherwise known as the Local Government Code, the Sangguniang Panglungsod is empowered to enact ordinances declaring, preventing or abating noise and other forms of nuisance. It bears stressing, however, that the Sangguniang Bayan cannot declare a particular thing as a nuisance per se and order its condemnation. **It does not have the power to find, as a fact, that a particular thing is a nuisance when such thing is not a nuisance per se; nor can it authorize the extrajudicial condemnation and destruction of that as a nuisance which in its nature, situation or use is not such. Those things must be determined and resolved in the ordinary courts of law.** If a thing, be in fact, a nuisance due to the manner of its operation, that question cannot be determined by a mere resolution of the Sangguniang Bayan. (emphasis supplied)

Despite the hotel's classification as a nuisance *per accidens*, however, We still find in this case that the LGU may nevertheless properly order the hotel's demolition. This is because, in the exercise of police power and the general welfare clause,[18] property rights of individuals may be subjected to restraints and burdens in order to fulfil the objectives of the government.

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[14] *Salao v. Santos*, 67 Phil. 550 (1939).

[15] 2 J.C.S. Sangco, TORTS AND DAMAGES 893 (1994).

[16] *AC Enterprises v. Frabelle Properties Corp.*, G.R. No. 166744, November 2, 2006, 506 SCRA 625, 660-661.

[17] Id.

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

Otherwise stated, the government may enact legislation that may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare.[19]

One such piece of legislation is the LGC, which authorizes city and municipal governments, acting through their local chief executives, to issue demolition orders. Under existing laws, the office of the mayor is given powers not only relative to its function as the executive official of the town; it has also been endowed with authority to hear issues involving property rights of individuals and to come out with an effective order or resolution thereon.[20] Pertinent herein is Sec. 444 (b)(3)(vi) of the LGC, which empowered the mayor to order the closure and removal of illegally constructed establishments for failing to secure the necessary permits, to wit:

> **Section 444.** The Chief Executive: Powers, Duties, Functions and Compensation. –
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> x x x x
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> (b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:
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> x x x x
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> (3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans, program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:
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> x x x x
>
> **(vi) Require owners of illegally constructed houses, buildings or other structures to obtain the necessary permit, subject to such fines and penalties as may be imposed by law or ordinance, or to make necessary changes in the construction of the same when said construction violates any law or ordinance, or to order the demolition or removal of said house, building or structure within the period prescribed by law or ordinance**. (emphasis supplied)

c. Requirements for the exercise of the power are present

i. Illegality of structures

In the case at bar, petitioner admittedly failed to secure the necessary permits, clearances, and exemptions before the construction, expansion, and operation of Boracay Wet Cove's hotel in Malay, Aklan. To recall, petitioner

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[19] *Gancayo v. City Government of Quezon*, supra note 12, at 864-865.
[20] *City Engineer of Baguio v. Baniqued*, supra note 9, at 633.

declared that the application for zoning compliance was still pending with the office of the mayor even though construction and operation were already ongoing at the same time. As such, it could no longer be denied that petitioner openly violated Municipal Ordinance 2000-131, which provides:

> SECTION 9. – Permits and Clearances.
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> (a) **No building or structure shall be allowed to start construction unless a Building Permit therefore has been duly issued by the Office of the Municipal Engineer.** Once issued, the building owner or any person in charge of the construction shall display on the lot or on the building undergoing construction a placard containing the Building Permit Number and the date of its issue**. The office of the Municipal Engineer shall not issue any building permit unless:**
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> **1. The proposed construction has been duly issued a Zoning Clearance by the Office of the Municipal Zoning Officer;**
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> 2. The proposed construction has been duly endorsed by the Sangguniang Bayan through a Letter of Endorsement.
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> (b) Only buildings/structures which has complied with all the requirements for its construction as verified to by the Building Inspector and the Sangguniang Bayan shall be issued a Certificate of Occupancy by the Office of the Municipal Engineer.
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> (c) **No Business or Mayor's Permit shall be issued to businesses being undertaken on buildings or structures which were not issued a certificate of Occupancy beginning January 2001 and thereafter**.
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> x x x x
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> SECTION 10. – Penalties.
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> x x x x
>
> (e) Any building, structure, or contraption erected in any public place within the Municipality of Malay such as but not limited to streets, thoroughfares, sidewalks, plazas, beaches or in any other public place are hereby declared as nuisance and illegal structure. **Such building structure or contraption shall be demolished by the owner thereof or any of his authorized representative within ten (10) days from receipt of the notice to demolish. Failure or refusal on the part of the owner or any of his authorized representative to demolish the illegal structure within the period herein above specified shall automatically authorize the government of the Municipality of Malay to demolish the same, gather and keep the construction materials of the demolished structure**. (emphasis supplied)

Petitioner cannot justify his position by passing the blame onto the respondent mayor and the latter's failure to act on his appeal for this does not, in any way, imply that petitioner can proceed with his infrastructure projects. On the contrary, **this only means that the decision of the zoning administrator denying the application still stands and that petitioner acquired no right to construct on the no build zone**. The illegality of the construction cannot be cured by merely tendering payment for the necessary fees and permits since the LGU's refusal rests on valid grounds.

Instead of taking the law into his own hands, petitioner could have filed, as an alternative, a petition for mandamus to compel the respondent mayor to exercise discretion and resolve the controversy pending before his office. There is indeed an exception to the rule that matters involving judgment and discretion are beyond the reach of a writ of *mandamus*, for such writ may be issued to compel action in those matters, when refused. Whether or not the decision would be for or against petitioner would be for the respondent mayor to decide, for while mandamus may be invoked to compel the exercise of discretion, it cannot compel such discretion to be exercised in a particular way.[21] What would have been important was for the respondent mayor to immediately resolve the case for petitioner to be able to go through the motions that the zoning clearance application process entailed.

Alas, petitioner opted to defy the zoning administrator's ruling. He consciously chose to violate not only the Ordinance but also Sec. 301 of PD 1096, laying down the requirement of building permits, which provides:

> Section 301. Building Permits. No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done.

This twin violation of law and ordinance warranted the LGU's invocation of Sec. 444 (b)(3)(vi) of the LGC, which power is separate and distinct from the power to summarily abate nuisances *per se*. Under the law, insofar as illegal constructions are concerned, the mayor can, after satisfying the requirement of due notice and hearing, order their closure and demolition.

ii. Observance of procedural due process rights

In the case at bench, the due process requirement is deemed to have been sufficiently complied with. *First*, basic is the rule that public officers enjoy the presumption of regularity in the performance of their duties.[22] The burden is on the petitioner herein to prove that Boracay West Cove was deprived of the opportunity to be heard before EO 10 was issued. Regrettably, copies of the Cease and Desist Order issued by the LGU and of the assailed EO 10 itself were never attached to the petition before this Court, which documents could have readily shed light on whether or not petitioner has been accorded the 10-day grace period provided in Section 10 of the Ordinance. In view of this fact, the presumption of regularity must be sustained. *Second*, as quoted by petitioner in his petition before the CA, the assailed EO 10 states that petitioner received notices from the municipality government on March 7 and 28, 2011, requiring Boracay West Cove to

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[21] *Amante v. Hidalgo*, 67 Phil. 338 (1939).
[22] RULES OF COURT, Rule 131, Sec. 3(m).

comply with the zoning ordinance and yet it failed to do so.[23] If such was the case, the grace period can be deemed observed and the establishment was already ripe for closure and demolition by the time EO 10 was issued in June. *Third*, the observance of the 10-day allowance for the owner to demolish the hotel was never questioned by petitioner so there is no need to discuss the same. Verily, the only grounds invoked by petitioner in crying due process violation are (1) the absence of a court order prior to demolition and (2) the municipal government's exercise of jurisdiction over the controversy instead of the DENR. Therefore, it can no longer be belatedly argued that the 10-day grace period was not observed because to entertain the same would result in the violation of the respondents' own due process rights.

Given the presence of the requirements under Sec. 444 (b)(3)(vi) of the LGC, whether the building constituted a nuisance *per se* or a nuisance *per accidens* becomes immaterial. The hotel was demolished not exactly because it is a nuisance but because it failed to comply with the legal requirements prior to construction. It just so happened that, in the case at bar, the hotel's incident that qualified it as a nuisance *per accidens*—its being constructed within the no build zone—further resulted in the non-issuance of the necessary permits and clearances, which is a ground for demolition under the LGC. Under the premises, a court order that is required under normal circumstances is hereby dispensed with.

d. The FLAgT cannot prevail over the municipal ordinance and PD 1096

Petitioner next directs our attention to the following FLAgT provision:

> VII. The SECOND PARTY may construct permanent and/or temporary improvements or infrastructure in the FLAgT Area necessary and appropriate for its development for tourism purposes pursuant to the approved SMP. "Permanent Improvements" refer to access roads, and buildings or structures which adhere to the ground in a fixed and permanent manner. On the other hand, "Temporary Improvements" include those which are detachable from the foundation or the ground introduced by the SECOND PARTY in the FLAgT Area and which the SECOND PARTY may remove or dismantle upon expiration or cancellation of this AGREEMENT x x x.[24]

Taken in conjunction with the exceptions laid down in Sections 6 and 8 of the Ordinance, petitioner argues that Boracay West Cove is exempted from securing permits from the LGU. Said exceptions read:

> SECTION 6. – No building or structure shall be allowed to be constructed on a slope Twenty Five Percent (25%) or higher unless provided with soil erosion protective structures and authorized by the Department of Environment and Natural Resources.

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[23] *Rollo*, p. 88.
[24] Id. at 191.

> x x x x
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> SECTION 8. – No building or structure shall be allowed to be constructed on a swamp or other water-clogged areas unless authorized by the Department of Environment and Natural Resources.

According to petitioner, the fact that it was issued a FLAgT constitutes sufficient authorization from the DENR to proceed with the construction of the three-storey hotel.

The argument does not persuade.

The rights granted to petitioner under the FLAgT are not unbridled. Forestlands, although under the management of the DENR, are not exempt from the territorial application of municipal laws, for local government units legitimately exercise their powers of government over their defined territorial jurisdiction.

Furthermore, the conditions set forth in the FLAgT and the limitations circumscribed in the ordinance are not mutually exclusive and are, in fact, cumulative. As sourced from Sec. 447 (a)(5)(i) of the LGC:

> **Section 447.** Powers, Duties, Functions and Compensation. –
>
> (a) The sangguniang bayan, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code, and shall:
>
> x x x x
>
> (5) Approve ordinances which shall ensure the efficient and effective delivery of the basic services and facilities as provided for under Section 17 of this Code, and in addition to said services and facilities, shall:
>
> **(i) Provide for the establishment, maintenance, protection, and conservation of communal forests** and watersheds, tree parks, greenbelts, mangroves, **and other similar forest development projects** x x x. (emphasis added)

Thus, aside from complying with the provisions in the FLAgT granted by the DENR, it was incumbent on petitioner to likewise comply with the no build zone restriction under Municipal Ordinance 2000-131, which was already in force even before the FLAgT was entered into. On this point, it is well to stress that Sections 6 and 8 of the Ordinance do not exempt petitioner from complying with the restrictions since these provisions adverted to grant exemptions from the ban on constructions on slopes and swamps, not on the no build zone.

Additionally, the FLAgT does not excuse petitioner from complying with PD 1096. As correctly pointed out by respondents, the agreement cannot and will not amend or change the law because a legislative act cannot be altered by mere contractual agreement. Hence, petitioner has no valid reason for its failure to secure a building permit pursuant to Sec. 301 of the National Building Code.

e. The DENR does not have primary jurisdiction over the controversy

Lastly, in ascribing grave abuse of discretion on the part of the respondent mayor, petitioner argued that the hotel site is a forestland under the primary jurisdiction of the DENR. As such, the merits of the case should have been passed upon by the agency and not by the LGU. In the alternative, petitioner explains that even if jurisdiction over the matter has been devolved in favor of the LGU, the DENR still has the power of review and supervision over the former's rulings. As cited by the petitioner, the LGC reads:

> **Section 17.** Basic Services and Facilities. –
>
> x x x x
>
> (b) Such basic services and facilities include, but are not limited to, the following:
>
> x x x x
>
> (2) For a Municipality:
>
> x x x x
>
> (ii) Pursuant to national policies and **subject to supervision, control and review of the DENR,** implementation of community-based forestry projects which include integrated social forestry programs and similar projects; management and control of communal forests with an area not exceeding fifty (50) square kilometers; establishment of tree parks, greenbelts, and similar forest development projects. (emphasis added)

Petitioner has made much of the fact that in line with this provision, the DENR Region 6 had issued an opinion favourable to petitioner.[25] To petitioner, the adverted opinion effectively reversed the findings of the respondent mayor that the structure introduced was illegally constructed.

We disagree.

In alleging that the case concerns the development and the proper use of the country's environment and natural resources, petitioner is skirting the

[25] Id. at 144.

principal issue, which is Boracay West Cove's non-compliance with the permit, clearance, and zoning requirements for building constructions under national and municipal laws. He downplays Boracay West Cove's omission in a bid to justify ousting the LGU of jurisdiction over the case and transferring the same to the DENR. He attempts to blow the issue out of proportion when it all boils down to whether or not the construction of the three-storey hotel was supported by the necessary documentary requirements.

Based on law and jurisprudence, the office of the mayor has quasi-judicial powers to order the closing and demolition of establishments. This power granted by the LGC, as earlier explained, We believe, is not the same power devolved in favor of the LGU under Sec. 17 (b)(2)(ii), as above-quoted, which is subject to review by the DENR. The fact that the building to be demolished is located within a forestland under the administration of the DENR is of no moment, for what is involved herein, strictly speaking, is not an issue on environmental protection, conservation of natural resources, and the maintenance of ecological balance, but the legality or illegality of the structure. Rather than treating this as an environmental issue then, focus should not be diverted from the root cause of this debacle—compliance.

Ultimately, the purported power of review by a regional office of the DENR over respondents' actions exercised through an instrumentality of an ex-parte opinion, in this case, finds no sufficient basis. At best, the legal opinion rendered, though perhaps informative, is not conclusive on the courts and should be taken with a grain of salt.

WHEREFORE, in view of the foregoing, the petition is hereby **DENIED** for lack of merit. The Decision and the Resolution of the Court of Appeals in CA-G.R. SP No. 120042 dated August 13, 2013 and February 3, 2014, respectively, are hereby **AFFIRMED**.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice

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

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