



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**THE MUNICIPALITY OF  
 ALFONSO LISTA, IFUGAO,**  
 represented by **CHARLES L.  
 CATTILING**, in his capacity as  
**Municipal Mayor and ESTRELLA S.  
 ALIGUYON**, in her capacity as  
**Municipal Treasurer,**  
 Petitioner,

**G.R. No. 191442**

Present:

**CARPIO, J.**, Chairperson,  
**BRION,**  
**DEL CASTILLO,**  
**MENDOZA,** and  
**LEONEN, JJ.**

- versus -

Promulgated:

**27 JUL 2016**

**THE COURT OF APPEALS,  
 SPECIAL FORMER SIXTH  
 DIVISION and SN ABOITIZ  
 POWER-MAGAT, INC.,**  
 Respondents.

X-----X

**RESOLUTION**

**BRION, J.:**

We resolve the municipality of Alfonso Lista, Ifugao's (*the municipality*) petition for *certiorari* challenging the Court of Appeals' (CA) decision<sup>1</sup> and resolution<sup>2</sup> in **CA-G.R. SP No. 107926**. The CA granted SN Aboitiz Power-Magat, Inc.'s (*SNAPM*) petition for *certiorari* of the Regional

<sup>1</sup> Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Jose L. Sabio, Jr. and Vicente S.E. Veloso. *Rollo*, pp. 22-35.

<sup>2</sup> Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Andres B. Reyes, Jr. and Vicente S.E. Veloso. *Id.* at 12-17.

Trial Court's (*RTC*) refusal to issue a temporary restraining order during the pendency of **Special Civil Action Case No. 17-09**.<sup>3</sup>

## ANTECEDENTS

SNAPM is a corporation engaged in the financing and acquisition of hydropower generating facilities privatized by the Power Sector Assets and Liabilities Management Corporation (*PSALM*).

On December 31, 2006, SNAPM entered into an agreement with PSALM to acquire the Magat Power Plant located along the boundary of Alfonso Lista, Ifugao, and Ramon, Isabela.

SNAPM registered its power plant operation as a pioneer enterprise with the Board of Investments (*BOI*). BOI approved the application on July 12, 2007.

The Local Government Code<sup>4</sup> exempts BOI-registered pioneer enterprises from the payment of local business taxes (*LBTs*) **for a period of 6 years from the date of registration**. SNAPM however, overlooked this exemption and paid its LBTs for the year 2007.

On January 20, 2009, SNAPM realized its mistake and notified the officials of Alfonso Lista, Ifugao, of its exemption from paying LBTs until July 11, 2013.

However, the mayor of Alfonso Lista refused to recognize the exemption. He threatened to withhold the issuance of a mayor's Permit should SNAPM refuse to pay its LBTs.

On January 29, 2009, SNAPM paid its LBTs for the first quarter of 2009 *under protest*. In return, the mayor of Alfonso Lista issued a temporary mayor's permit effective only until March 15, 2009.

On February 16, 2009, SNAPM presented the Municipality with a letter from the BOI that confirmed its exemption from paying LBTs for a period of six (6) years from July 12, 2007. Nevertheless, the municipality refused to recognize SNAPM's exemption.

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<sup>3</sup> RTC, Alfonso Lista, Ifugao, Branch 15, through Acting Presiding Judge Efren M. Cacatian.

<sup>4</sup> Republic Act No. 7160, The LOCAL GOVERNMENT CODE:

**Sec. 133.** *Common Limitations on the Taxing Powers of Local Government Units.* - Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays **shall not extend to the levy of the following:**

xxxx

(g) Taxes on business enterprises **certified by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years**, respectively from the date of registration; xxx

On March 4, 2009, SNAPM filed an administrative claim with the Municipal Treasurer for a tax refund or tax credit of its paid LBTs.

On March 6, 2009, SNAPM also filed a complaint for injunction (with an application for a Temporary Restraining Order [TRO] and/or a writ of preliminary injunction) before the RTC against the municipality, its Mayor, and its Municipal Treasurer. SNAPM sought to restrain: the collection of LBTs, the mayor's refusal to issue a mayor's permit, the closure of the power plant, and any other acts that would prevent it from operating its Alfonso Lista power plant. The complaint was docketed as **Special Civil Action Case No. 17-09**.

SNAPM's temporary mayor's permit expired on March 15, 2009.

On March 18, 2009, the RTC denied SNAPM's application for a TRO.<sup>5</sup> The RTC ruled that at that early stage of the proceedings, SNAPM's entitlement to a tax exemption under the Local Government Code was still "cloudy" and "vague." It pointed out that SNAPM could avail of a tax credit or refund later on if its complaint is found meritorious.

SNAPM filed a petition for *certiorari* before the CA questioning the RTC's March 18, 2009 order. Its petition was docketed as **CA-G.R. SP No. 107926**.

On June 9, 2009, the CA issued a temporary restraining order prohibiting the municipality from: (1) assessing and collecting local business taxes from SNAPM; (2) refusing to issue a Mayor's permit; and (3) distraining or levying on SNAPM's properties, closing the power plant, or committing any other acts that would obstruct SNAPM's operation of the power plant.<sup>6</sup>

On August 7, 2009, the CA granted the petition for *certiorari* and set aside the RTC's order denying SNAPM's TRO application.<sup>7</sup> It also made its July 9, 2009 TRO permanent, subject to the RTC's final determination of **Special Civil Action Case No. 17-09**.

The CA reasoned that the RTC gravely abused its discretion because SNAPM's entitlement to an injunctive writ is clear; Section 133 of the Local Government Code evidently limits the municipality's power to impose LBTs on BOI-registered enterprises.

The municipality moved for reconsideration, arguing: (1) that no supervening events took place between June 5, 2009 and August 7, 2009, that warranted the permanent extension of the TRO; and (2) that SNAPM's

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<sup>5</sup> *Rollo*, p. 18.

<sup>6</sup> *Id.* at 46.

<sup>7</sup> *Id.* at 22.

one million-peso bond was insufficient considering it expected to assess SNAPM with an annual 84 million pesos in LBTs.

On January 20, 2010, the CA clarified that it did not extend the TRO indefinitely.<sup>8</sup> By making its June 5, 2009 TRO “*permanent subject to the final determination of the case,*” it merely issued a writ of injunction for the duration of the case. It concluded that justice and equity would be better served if the status quo was preserved until the RTC resolved the merits of the case.<sup>9</sup>

It also brushed aside the municipality’s claim as to the sufficiency of the injunction bond for the latter’s failure to justify its exorbitant assessment of 84 million pesos.

On March 16, 2010, the municipality filed the present petition for *certiorari*.

#### The Municipality’s Petition

The municipality claims that the CA acted with grave abuse of discretion and that there is no appeal or any other speedy and adequate remedy in the ordinary course of law.<sup>10</sup>

Citing Rule 58 of the Rules of Court, it maintains that a TRO issued by the CA has a life span of 60 days and cannot exist indefinitely. It reiterated that no supervening events took place between June 5, 2009 and August 7, 2009, that justified the indefinite extension of the TRO. Lastly, it insists that SNAPM’s entitlement to a tax exemption from the local government was “cloudy” and “vague.”

#### SNAPM’s Comment

SNAPM counters that the CA, by reversing and setting aside the RTC’s March 18, 2009 order denying its application for a TRO **and/or writ of preliminary injunction**, effectively granted its prayer for a preliminary injunction.<sup>11</sup> Hence, the “temporary” restraining order was made “permanent.” It was not, as the municipality suggested, extended.

SNAPM also argues that supervening events are not necessary to justify the CA’s act of making the TRO “permanent.” The CA already explained that as a pioneer enterprise registered with the BOI, SNAPM has a clear and unmistakable right to be exempt from paying LBTs under the Local Government Code.

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<sup>8</sup> Id. at 12.

<sup>9</sup> Id. at 16

<sup>10</sup> Id. at 5.

<sup>11</sup> Id. at 71.

Lastly, SNAPM faults the municipality for resorting to *certiorari* when an appeal was available under Rule 45.

On January 12, 2011, we required the municipality to file a reply to SNAPM's comment.<sup>12</sup> However, the municipality failed to comply due to changes in its administration from the 2013 elections.

On September 25, 2014, the new Municipal Mayor, Glenn D. Prudenciano, asked for a non-extendible period of thirty days to file its reply due to their lack of a Municipal Legal Officer.<sup>13</sup>

We granted the motion on March 23, 2015. However, the newly appointed municipal legal officer merely asked for another extension instead of filing a reply.<sup>14</sup> The municipality has yet to file its reply.

Considering the municipality's repeated noncompliance with our orders, we consider the municipality's right to file a reply effectively waived. We thus proceed to rule on the merits of the case.

## OUR RULING

We DISMISS the petition for lack of merit.

*First*, as the respondent pointed out, the municipality could have appealed the CA's verdict. Under Rule 45 of the Rules of Court,<sup>15</sup> the proper remedy to reverse a judgment, final order, or resolution of the CA is to file a petition for review on *certiorari*, not a petition for *certiorari* under Rule 65.

*Certiorari* is an extraordinary *remedy of last resort*; it is only available **when there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law**. The availability of an appeal *precludes* immediate resort to *certiorari*, even if the ascribed error was lack or excess of jurisdiction or grave abuse of discretion.<sup>16</sup> The municipality did not even bother to explain this glaring defect in its petition.

*Second*, this petition stemmed from the CA's grant of a writ of preliminary injunction against the municipality from assessing and levying LBTs on SNAPM pending the RTC's final determination of SNAPM's

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<sup>12</sup> Id. at 92.

<sup>13</sup> Id. at 147.

<sup>14</sup> Id. at 152.

<sup>15</sup> SECTION 1. *Filing of petition with the Supreme Court*. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

<sup>16</sup> *Malayang Manggagawa ng Stayfast Phils., Inc. v. NLRC*, G.R. No. 155306, August 28, 2013, 704 SCRA 24, 35.

entitlement to a tax exemption. The petition has been rendered moot by the expiration of SNAPM's alleged six-year exemption from LBTs; the municipality acquired a clear and unmistakable right to collect LBTs from SNAPM on July 12, 2013.

At this point, determining the propriety of the CA's injunctive writ would be a useless academic exercise. All that remains is for the RTC to make a final determination of SNAPM's entitlement to an exemption from LBTs for the years 2007 to 2013.

**WHEREFORE, we DISMISS the petition for lack of merit.**

**SO ORDERED.**

  
ARTURO D. BRION  
Associate Justice

**WE CONCUR:**

  
ANTONIO T. CARPIO  
Associate Justice  
Chairperson

  
MARIANO C. DEL CASTILLO  
Associate Justice

  
JOSE CATRAL MENDOZA  
Associate Justice

  
MARVIC M.V.F. LEONEN  
Associate Justice

**ATTESTATION**

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

  
ANTONIO T. CARPIO  
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 Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

**MARIA LOURDES P. A. SERENO**

Chief Justice