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FIRST DIVISION

[G.R. No. 167290. November 26, 2014]

HERMANO OIL MANUFACTURING & SUGAR CORPORATION, *petitioner, vs.* **TOLL REGULATORY BOARD, ENGR. JAIME S. DUMLAO, JR., PHILIPPINE NATIONAL CONSTRUCTION CORPORATION (PNCC) and DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH),** *respondents.*

SYLLABUS

1. **POLITICAL LAW; DOCTRINE OF SOVEREIGN AUTHORITY; PROPERLY INVOKED BY THE TOLL REGULATORY BOARD (TRB) AND THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH).—** [T]he TRB, Dumlao and the DPWH correctly invoked the doctrine of sovereign immunity in their favor. The TRB and the DPWH performed purely or essentially government or public functions. As such, they were invested with the inherent power of sovereignty. Being unincorporated agencies or entities of the National Government, they could not be sued as such. On his part, Dumlao was acting as the agent of the TRB in respect of the matter concerned.

2. **REMEDIAL LAW; JURISDICTION; REGIONAL TRIAL COURT; NO JURISDICTION TO ISSUE INJUNCTION AGAINST AN INFRASTRUCTURE PROJECT OF THE GOVERNMENT.—** It appears that the petitioner's complaint principally sought to restrain the respondents from implementing an access fence on its property, and to direct them to grant it a right of way to the NLEX. Clearly, the reliefs being sought by the petitioner were beyond the jurisdiction of the RTC because no court except the Supreme Court could issue an injunction against an infrastructure project of the Government. x x x (as provided under) Presidential Decree No. 1818 amended by Republic Act No. 8975, approved on November 7, 2000.

3. **POLITICAL LAW; POLICE POWER; ESTABLISHMENT OF ACCESS FENCE ALONG THE NORTH LUZON EXPRESSWAY (NLEX) TO SECURE THE GENERAL SAFETY**

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AND WELFARE OF THE MOTORISTS USING THE NLEX, INCIDENTALLY SUBJECTING A PROPERTY TO CERTAIN RESTRAINT, IS A VALID EXERCISE OF THE POLICE POWER.— There can be no question that the respondents' maintenance of safety measures, including the establishment of the access fence along the NLEX, was a component of the continuous improvement and development of the NLEX. x x x It is relevant to mention that the access fence was put up pursuant to Republic Act No. 2000 (*Limited Access Highway Act*), the enforcement of which was under the authority of the DOTC. x x x [T]he access fence was a reasonable restriction on the petitioner's property given the location thereof at the right side of Sta. Rita Exit of the NLEX. Although some adjacent properties were accorded unrestricted access to the expressway, there was a valid and reasonable classification for doing so because their owners provided ancillary services to motorists using the NLEX, like gasoline service stations and food stores. A classification based on practical convenience and common knowledge is not unconstitutional simply because it may lack purely theoretical or scientific uniformity. Lastly, the limited access imposed on the petitioner's property did not partake of a compensable taking due to the exercise of the power of eminent domain. There is no question that the property was not taken and devoted for public use. Instead, the property was subjected to a certain restraint, *i.e.* the access fence, in order to secure the general safety and welfare of the motorists using the NLEX. There being a clear and valid exercise of police power, the petitioner was certainly, not entitled to any just compensation.

APPEARANCES OF COUNSEL

Jaso Dorillo & Associates for petitioner.
Office of the Government Corporate Counsel for PNCC.

D E C I S I O N

BERSAMIN, *J.*:

The issue to be determined concerns the demand of the petitioner to have access to the North Luzon Expressway (NLEX) by way of an easement of right of way. The demand was rebuffed

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by the respondents, and upheld by both the trial and appellate courts.

The Case

On appeal by review on *certiorari* is the decision promulgated on October 27, 2004,[1] whereby the Court of Appeals (CA) affirmed the dismissal of the petitioner's complaint for specific performance by the Regional Trial Court (RTC) in Malolos, Bulacan, Branch 7, through the order issued on March 6, 2002.[2]

Antecedents

The petitioner owned a parcel of land located at the right side of the Sta. Rita Exit of the NLEX situated at Barangay Sta. Rita, Guiguinto, Bulacan and covered by Transfer Certificate of Title (TCT) No. T-134222 in its name issued by the Registry of Deeds of Bulacan.[3] The parcel of land was bounded by an access fence along the NLEX. In its letter dated September 7, 2001,[4] the petitioner requested that respondent Toll Regulatory Board (TRB) grant an easement of right of way, contending that it had been totally deprived of the enjoyment and possession of its property by the access fence that had barred its entry into and exit from the NLEX. On September 26, 2001, however, the TRB denied the petitioner's request, explaining thusly:

> It is with regret that we cannot favorably consider your client's request at this point in time. Said request is inconsistent with the provision of Section 7.0 of Republic Act No. 2000, also known as the Limited Access Highway Act. Moreover, allowing easement of right-of-way may have detrimental/adverse effect on the scheduled rehabilitation and improvement of the North Luzon Expressway Interchanges, as

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[1] *Rollo,* pp. 56-67; penned by Associate Justice Jose C. Reyes, Jr., and concurred in by Associate Justice Ruben T. Reyes (later the Presiding Justice, and a Member of the Court, but already retired) and Associate Justice Perlita J. Tria Tirona (retired).

[2] *Id*. at 143-144.

[3] *Id*. at 88.

[4] *Id*. at 89.

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well as on the operational problems, *i.e.* traffic conflicts that may arise, if approved.[5]

Thereafter, the petitioner sued the TRB and Engr. Jaime S. Dumlao, the TRB's Executive Director, in the RTC,[6] demanding specific performance, the grant of the easement of right of way and damages (Civil Case No. 37-M-2002). The petitioner amended its complaint to implead the Philippine National Construction Corporation (PNCC) and the Department of Public Works and Highways (DPWH) as indispensable parties.[7]

The petitioner alleged in its amended complaint that the access fence had totally deprived it of the use and enjoyment of its property by preventing ingress and egress to its property; that the only access leading to its property was the road network situated in front of its property; that it was thereby deprived of its property without due process of law and just compensation; and that it was also denied equal protection of the law because adjacent property owners had been given ingress and egress access to their properties. It prayed that the RTC:

1. Immediately issue a writ of preliminary injunction/temporary restraining order enjoining the defendants, its agents and/or representatives from depriving plaintiff to ingress and egress of its property;

2. After due hearing:

a) Render the foregoing writ of preliminary injunction perpetual;

b) Granting plaintiff a right of way;

c) Declare the condemnation of plaintiff's property as null and void. Alternatively, plaintiff prays that defendants be ordered to pay plaintiff a just and fair compensation of the latter's property in the amount of not less than Four Thousand Pesos (Ps. 4,000.00) per square meter;

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[5] *Id.* at 90.

[6] *Id.* at 91-96.

[7] *Id.* at 100-106.

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d) To pay plaintiff the amount of THREE HUNDRED THOUSAND PESOS (Ps. 300,000.00) and Ps. 5,000.00 per court appearance by way of Attorney's fees;

e) To pay plaintiff Moral and Exemplary Damages in the amount of Ps. 200,000.00; and

f) To pay plaintiff the costs of suit.

Plaintiff further prays for such other reliefs and remedies as may be deemed just and equitable under the premises.[8]

Appearing for the TRB, the Office of the Solicitor General (OSG) filed a *Motion to Dismiss with Opposition to the Application for the Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction* based on the following grounds:[9]

I.

THE HONORABLE COURT HAS NO JURISDICTION OVER THE CASE

II.

THE PETITION STATES NO CAUSE OF ACTION CONSIDERING THAT:

A. PLAINTIFF IS NOT THE REAL PARTY IN INTEREST

B. EASEMENT WILL NOT LIE BECAUSE THE LIMITED ACCESS TO THE NORTH LUZON EXPRESSWAY IS ALLOWED UNDER REPUBLIC ACT 2000

C. THE STATE CANNOT BE SUED WITHOUT ITS CONSENT

III.

THE REQUISITES FOR THE ISSUANCE OF TEMPORARY RESTRAINING ORDER AND/OR WRIT OF INJUNCTION ARE NOT PRESENT

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[8] *Id*. at 104-105.

[9] *Id*. at 115-133.

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IV.

THE COMPLAINT HAS NO LEGAL BASIS, THE PROPER REMEDY AVAILABLE IN THIS CASE IS NOT COMPLAINT BUT A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT.

In its order dated March 6, 2002,[10] the RTC granted the motion to dismiss, observing as follows:

> The present action against the defendants Toll Regulatory Board and its Executive Director, Engr. Jaime S. Dumlao, Jr., could be considered as a suit against the state without its consent as among the reliefs prayed for in the complaint is to require the said defendants to pay, jointly and severally, a just and reasonable compensation of the plaintiff's property which, if awarded in the judgment against said defendants, would ultimately involve an appropriation by the state of the amount needed to pay the compensation and damages so awarded. Moreover, as pointed out by the defendants-movants, defendant Jaime S. Dumlao, Jr. is sued in his official capacity so that the instant complaint against him is tantamount to a claim against the state which cannot be sued without its consent.
>
> This principle applies with equal force as regards new defendant Department of Public Works and Highways (DPWH).
>
> Defendant Philippine National Construction Corporation (PNCC), on the other hand, was impleaded as additional defendant being the entity that operates the North Luzon Expressway and was primarily responsible in depriving the plaintiff of the use and enjoyment of its property by reason of the construction of the access or right of way fence that prevents ingress to and egress from the subject property, considering further that the other defendants had refused to grant plaintiff's request for an easement of right of way.
>
> The main objective and prayer of the plaintiff is for this court to issue a writ of injunction that will restrain the defendants from depriving it of ingress and egress to its property in question or to grant to it a right of way to its property.
>
> Suffice it to say that the main relief sought by the plaintiff is beyond the jurisdiction of this court to grant as provided for under Presidential Decree No. 1818 and Republic Act No. 8975 which essentially prohibit

[10] *Id*. at 143-144.

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the courts from issuing temporary restraining orders and/or writs of injunction against government infrastructure projects, and which expressly declares any such TRO or writ of injunction void under Section 3 of R.A. No. 8975.

In view of all the foregoing, the motion to dismiss is hereby GRANTED.

WHEREFORE, the instant complaint is hereby DISMISSED.

SO ORDERED.[11]

The petitioner sought reconsideration, but the RTC denied its motion on July 25, 2002.[12]

The petitioner appealed.[13]

Judgment of the CA

On October 27, 2004, the CA promulgated its assailed judgment, affirming the RTC's dismissal of the complaint, to wit:

The law is clear. Plaintiff-appellant does not deny that the NLEX is a limited access facility. Neither did it put forward any reason why it should not be covered by the said law. Plaintiff-appellant, therefore, cannot expect any court to issue a decision in its favor in violation of an existing law. The Court further notes that plaintiff-appellant skirted this issue in its pleadings perhaps because it recognizes the fact that its prayers in the complaint before the trial court is in violation of the said law.

Moreover, as pointed out by defendants-appellees (*Rollo*, p. 19 and 127-128), when plaintiff-appellant acquired the property on December 14, 1999 (See: Records, p. 33), the NLEX was already in existence and as a matter of fact Entry No. 189568 in the title indicated that a portion of the property was already sold to the Republic of the Philippines (See: Dorsal portion, Records, p. 33). It is basic that a person cannot demand an easement of right of way if the isolation of the property was due to owner's own act (Art. 649, NCC; *Villanueva v Velasco,* 346 SCRA 99[2000]). In the present case, when the plaintiff-

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[11] *Id.* at 143-144.

[12] *Id.* at 162.

[13] *Id.* at 163.

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appellant bought the property in 1999, the NLEX was already in existence and so was the access fence. In short, its predecessors-in-interest allowed the property to be isolated. Plaintiff-appellant is now bound by the acts of its predecessors-in-interest.

Moreover, as admitted by plaintiff-appellant in its amended complaint, there is a road network in front of the property which serves as its access (Records, p. 28). It is settled that to be able to demand a compulsory right of way, the dominant estate must not have adequate access to a public highway (*Villanueva v Velasco, supra).* Plaintiff-appellant did not complaint about the adequacy of the existing road works.

Also, as pointed out by defendants-appellees, the action below was one for specific performance which is proper only in case of contractual breach. In the present case, plaintiff-appellant cannot claim that defendants-appellees committed a breach of contract because there is precisely no contract between them.

As to the matter of non-suability, the Court notes that while defendant-appellee PNCC is a government owned and controlled corporation, the other defendants-appellees are either agencies of the State (DPWH and TRB) or an employee of a government agency. Plaintiff-appellant argued that the principle of non-suability of the state does not apply when the government acted in a non-governmental capacity. The Court, however, notes that plaintiff-appellant merely cites cases to this effect but did not put forward any argument why the maintenance of NLEX should be considered as a non-governmental function. It cannot be denied that the maintenance of the highways is part of the necessary functions of the government of maintaining public infrastructures.

Coming now to PNCC although it is not strictly a government agency, its function is a necessary incident to a government function and, hence, it should likewise enjoy immunity from suit (See: *Union Insurance Society of Canton, Ltd. v Republic of the Philippines,* 46 SCRA 120[1972]).

As to the assertion that no expropriation proceeding was taken against the subject property, the Court agrees with the PNCC that these arguments were not raised in the Court below and, hence, is no longer proper at this stage. Moreover, the Court notes that the proper party to complain against the alleged lack of proper expropriation proceeding is the previous owner, when portion of the property was sold to the Republic of the Philippines in 1979.

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WHEREFORE, the appealed Order dated March 6, 2002 of the Regional Trial Court of Malolos, Bulacan, Branch 7, in Civil Case No. 37-M-2002 is hereby **AFFIRMED.**

SO ORDERED.[14]

Issues

The present appeal is anchored on the following grounds, namely:

FIRST

THE DECISION OF THE COURT OF APPEALS IS REPUGNANT TO THE DUE PROCESS AND EQUAL PROTECTION CLAUSE ENSHRINED IN OUR CONSTITUTION AND PREVAILING JURISPRUDENCE.

SECOND

THE COURT OF APPEALS COMMITTED A GRAVE ABUSE OF DISCRETION IN DECLARING THAT ENTRY NO. 189568 IN THE TITLE OF HEREIN PETITIONER WAS ALREADY IN EXISTENCE WHICH SHOWED THAT EVEN BEFORE THE ACQUISITION OF THE PROPERTY IN 1999, THE NLEX WAS ALREADY IN EXISTENCE AND SO WAS THE ACCESS FENCE. THUS, ITS PREDECESSORS-IN-INTEREST ALLOWED THE PROPERTY TO BE ISOLATED.

THIRD

THE COURT OF APPEALS SERIOUSLY ERRED IN DECLARING THAT RESPONDENT PNCC, ALTHOUGH NOT STRICTLY A GOVERNMENT AGENCY, SHOULD LIKEWISE ENJOY IMMUNITY FROM SUIT.[15]

The foregoing grounds boil down to the issue of whether Civil Case No. 37-M-2002 was properly dismissed.

Ruling

We concur with both lower courts.

In our view, the TRB, Dumlao and the DPWH correctly invoked the doctrine of sovereign immunity in their favor. The

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[14] *Id.* at 63-67.

[15] *Id.* at 25.

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TRB and the DPWH performed purely or essentially government or public functions. As such, they were invested with the inherent power of sovereignty. Being unincorporated agencies or entities of the National Government, they could not be sued as such. On his part, Dumlao was acting as the agent of the TRB in respect of the matter concerned.

In *Air Transportation Office v. Ramos*,[16] we expounded on the doctrine of sovereign immunity in the following manner:

> An unincorporated government agency without any separate juridical personality of its own enjoys immunity from suit because it is invested with an inherent power of sovereignty. Accordingly, a claim for damages against the agency cannot prosper; otherwise, the doctrine of sovereign immunity is violated. However, the need to distinguish between an unincorporated government agency performing governmental function and one performing proprietary functions has arisen. The immunity has been upheld in favor of the former because its function is governmental or incidental to such function; it has not been upheld in favor of the latter whose function was not in pursuit of a necessary function of government but was essentially a business.

Nonetheless, the petitioner properly argued that the PNCC, being a private business entity, was not immune from suit. The PNCC was incorporated in 1966 under its original name of Construction Development Corporation of the Philippines (CDCP) for a term of fifty years pursuant to the Corporation Code.[17] In 1983, the CDCP changed its corporate name to the PNCC to reflect the extent of the Government's equity investment in the company, a situation that came about after the government financial institutions converted their loans into equity following the CDCP's inability to pay the loans.[18] Hence, the Government owned 90.3% of the equity of the PNCC, and only 9.70% of the PNCC's voting equity remained under private ownership.[19] Although the majority or controlling

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[16] G.R. No. 159402, February 23, 2011, 644 SCRA 36, 42-43.

[17] *Strategic Alliance Development Corporation v. Radstock Securities Limited,* G.R. Nos. 178158 & 180428, December 4, 2009, 607 SCRA 413, 448-449.

[18] *Id.* at 449.

[19] *Id.* at 449-450.

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shares of the PNCC belonged to the Government, the PNCC was essentially a private corporation due to its having been created in accordance with the Corporation Code, the general corporation statute.[20] More specifically, the PNCC was an acquired asset corporation under Administrative Order No. 59, and was subject to the regulation and jurisdiction of the Securities and Exchange Commission.[21] Consequently, the doctrine of sovereign immunity had no application to the PNCC.

The foregoing conclusion as to the PNCC notwithstanding, the Court affirms the dismissal of the complaint due to lack of jurisdiction and due to lack of cause of action.

It appears that the petitioner's complaint principally sought to restrain the respondents from implementing an access fence on its property, and to direct them to grant it a right of way to the NLEX. Clearly, the reliefs being sought by the petitioner were beyond the jurisdiction of the RTC because no court except the Supreme Court could issue an injunction against an infrastructure project of the Government. This is because Presidential Decree No. 1818, issued on January 16, 1981, prohibited judges from issuing restraining orders against government infrastructure projects, stating in its sole provision: "No court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or preliminary order, preliminary mandatory injunction in any case, dispute or controversy involving an infrastructure project." Presidential Decree No. 1818 was amended by Republic Act No. 8975,[22] approved on November 7, 2000, whose pertinent parts provide:

Section 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory*

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[20] *Philippine National Construction Corporation v. Pabion,* G.R. No. 131715, December 8, 1999, 320 SCRA 188, 218.

[21] *Id*. at 210.

[22] *An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting the Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions, or Preliminary Mandatory Injunctions, Providing Penalties for Violation Thereof, and for Other Purposes.*

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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*.

Section 4. *Nullity of Writs and Orders*.- Any temporary restraining order, preliminary injunction or preliminary mandatory injunction issued in violation of Section 3 hereof is void and of no force and effect.

Section 5. *Designation of Regional Trial Courts*.- The Supreme Court may designate regional trial courts to act as commissioners with the sole function of receiving facts of the case involving acquisition, clearance and development of right-of-way for government

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infrastructure projects. The designated regional trial court shall within thirty (30) days from the date of receipt of the referral, forward its findings of facts to the Supreme Court for appropriate action. x x x

As to what was embraced by the term *infrastructure project* as used in Presidential Decree No. 1818, the Court has ruled in *Francisco, Jr. v. UEM-MARA Philippines Corporation*:[23]

PD 1818 proscribes the issuance of a writ of preliminary injunction in any case involving an infrastructure project of the government. The aim of the prohibition, as expressed in its second whereas clause, is to prevent delay in the implementation or execution of government infrastructure projects (particularly through the use of provisional remedies) to the detriment of the greater good since it disrupts the pursuit of essential government projects and frustrates the economic development effort of the nation.

Petitioner argues that the collection of toll fees is not an infrastructure project of the government. He cites the definition of "infrastructure projects" we used in *Republic v. Silerio*:

> The term "infrastructure projects" means "construction, improvement and rehabilitation of roads, and bridges, railways, airports, seaports, communication facilities, irrigation, flood control and drainage, water supply and sewage systems, shore protection, power facilities, national buildings, school buildings, hospital buildings, and other related construction projects that form part of the government capital investment."
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> xxx xxx xxx

The definition of infrastructure projects specifically includes the improvement and rehabilitation of roads and not just its construction. Accordingly, even if the Coastal Road was merely upgraded and not constructed from scratch, it is still covered by the definition. **Moreover, PD 1818 itself states that any person, entity or governmental official cannot be prohibited from continuing the execution or implementation of such project or pursuing any lawful activity necessary for such execution or implementation.** Undeniably, the collection of toll fees is part of the execution or implementation of the MCTEP as agreed upon in the TOA. The TOA is valid since it has not been nullified. Thus it is a legitimate source of rights and obligations. It has the force and

[23] G.R. Nos. 135688-89, October 18, 2007, 536 SCRA 518, 526-529.

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effect of law between the contracting parties and is entitled to recognition by this Court. The MCTEP is an infrastructure project of the government forming part of the government capital investment considering that under the TOA, the government owns the expressways comprising the project. (Emphasis supplied.)

There can be no question that the respondents' maintenance of safety measures, including the establishment of the access fence along the NLEX, was a component of the continuous improvement and development of the NLEX. Consequently, the lower courts could not validly restrain the implementation of the access fence by granting the petitioner its right of way without exceeding its jurisdiction.

Nor did the establishment of the access fence violate the petitioner's constitutional and legal rights.

It is relevant to mention that the access fence was put up pursuant to Republic Act No. 2000 (*Limited Access Highway Act*), the enforcement of which was under the authority of the DOTC. Clarifying the DOTC's jurisdiction under this law in *Mirasol v. Department of Public Works and Highways*,[24] the Court has said–

RA 2000, otherwise known as the Limited Access Highway Act, was approved on 22 June 1957. Section 4 of RA 2000 provides that "[t]he Department of Public Works and Communications is authorized to do so design any limited access facility and to so regulate, restrict, or prohibit access as to best serve the traffic for which such facility is intended." The RTC construed this authorization to regulate, restrict, or prohibit access to limited access facilities to apply to the *Department of Public Works and Highways (DPWH)*.

The RTC's ruling is based on a wrong premise. The RTC assumed that the DPWH derived its authority from its predecessor, the Department of Public Works and Communications, which is expressly authorized to regulate, restrict, or prohibit access to limited access facilities under Section 4 of RA 2000. However, such assumption fails to consider the evolution of the Department of Public Works and Communications.

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[24] G.R. No. 158793, June 8, 2006, 490 SCRA 318, 337, 341-344.

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Upon the ratification of the 1987 Constitution in February 1987, the former Ministry of Public Works and Highways became the *Department of Public Works and Highways (DPWH)* and the former Ministry of Transportation and Communications became the *Department of Transportation and Communications (DOTC).*

DPWH issued DO 74 and DO 215 declaring certain expressways as limited access facilities on 5 April 1993 and 25 June 1998, respectively. Later, the TRB, under the DPWH, issued the Revised Rules and Regulations on Limited Access Facilities. However, on 23 July 1979, long before these department orders and regulations were issued, the *Ministry of Public Works, Transportation and Communications* was divided into two agencies – the *Ministry of Public Works* and the *Ministry of Transportation and Communications* – by virtue of EO 546. The question is, *which of these two agencies is now authorized to regulate, restrict, or prohibit access to limited access facilities?*

Under Section 1 of EO 546, the Ministry of Public Works (now DPWH) assumed the *public works* functions of the Ministry of Public Works, Transportation and Communications. On the other hand, among the functions of the Ministry of Transportation and Communications (now Department of Transportation and Communications [DOTC]) were to (1) formulate and recommend national policies and guidelines for the preparation and implementation of an integrated and comprehensive transportation and communications systems at the national, regional, and local levels; and (2) regulate, whenever necessary, activities relative to transportation and communications and prescribe and collect fees in the exercise of such power. Clearly, under EO 546, it is the DOTC, not the DPWH, which has authority to regulate, restrict, or prohibit access to limited access facilities.

Even under Executive Order No. 125 (EO 125) and Executive Order No. 125-A (EO 125-A), which further reorganized the DOTC, the authority to administer and enforce all laws, rules and regulations relative to transportation is clearly with the DOTC.

Thus, DO 74 and DO 215 are void because the DPWH has no authority to declare certain expressways as limited access facilities. Under the law, it is the DOTC which is authorized to administer and enforce all laws, rules and regulations in the field of transportation and to regulate related activities. (Emphasis supplied.)

Moreover, the putting up of the access fence on the petitioner's property was in the valid exercise of police power, assailable only

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upon proof that such putting up unduly violated constitutional limitations like due process and equal protection of the law.[25] In *Mirasol v. Department of Public Works and Highways*, the Court has further noted that:

> A toll way is not an ordinary road. As a facility designed to promote the fastest access to certain destinations, its use, operation, and maintenance require close regulation. Public interest and safety require the imposition of certain restrictions on toll ways that do not apply to ordinary roads. As a special kind of road, it is but reasonable that not all forms of transport could use it.[26]

Clearly, therefore, the access fence was a reasonable restriction on the petitioner's property given the location thereof at the right side of Sta. Rita Exit of the NLEX. Although some adjacent properties were accorded unrestricted access to the expressway, there was a valid and reasonable classification for doing so because their owners provided ancillary services to motorists using the NLEX, like gasoline service stations and food stores.[27] A classification based on practical convenience and common knowledge is not unconstitutional simply because it may lack purely theoretical or scientific uniformity.[28]

Lastly, the limited access imposed on the petitioner's property did not partake of a compensable taking due to the exercise of the power of eminent domain. There is no question that the property was not taken and devoted for public use. Instead, the property was subjected to a certain restraint, *i.e.* the access fence, in order to secure the general safety and welfare of the motorists using the NLEX. There being a clear and valid exercise of police power, the petitioner was certainly not entitled to any just compensation.[29]

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[25] *Id.* at 351.

[26] *Id.* at 353.

[27] *Rollo,* pp. 354-355.

[28] *Supra* note 24, at 352.

[29] See *Didipio Earth Savers' Multi-Purpose Association, Incorporated (DESAMA) v. Gozun,* G.R. No. 157882, March 30, 2006, 485 SCRA 586, 604-607.

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WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on October 27, 2004; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

*Sereno, C.J. (Chairperson), Leonardo-de Castro, Villarama, Jr.,** and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 172218. November 26, 2014]

FELICIANO B. DUYON, substituted by his children: MAXIMA R. DUYON-ORSAME, EFREN R. DUYON, NOVILYN R. DUYON, ELIZABETH R. DUYON-SIBUMA, MODESTO R. DUYON, ERROL R. DUYON, and DIVINA R. DUYON-VINLUAN, *petitioners, vs.* **THE FORMER SPECIAL FOURTH DIVISION OF THE COURT OF APPEALS and ELEONOR P. BUNAG-CABACUNGAN,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; COURT OF APPEALS; NO JURISDICTION OVER THE CRIMINAL ASPECT OF AN OMBUDSMAN CASE.—** "The Court of Appeals has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative disciplinary cases only. It cannot, therefore, review the orders, directives or decisions of the Office of the Ombudsman in criminal or non-administrative cases."

2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUISITES; GRAVE ABUSE OF DISCRETION, DEFINED.—** A petition

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* Vice Associate Justice Estela M. Perlas-Bernabe per Special Order No. 1885 dated November 24, 2014.