

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

Third Division

CITY OF KIDAPAWAN;
ELSA C. PALMONES, in her
capacity as the City
Treasurer; and OFELIA
GEMENTIZA-VALENCIA,
in her capacity as the City
Assessor of Kidapawan City,
Petitioners,

CTA AC No. 201

-versus-

Members:
UY, *Chairperson,*
RINGPIS-LIBAN, *and*
MODESTO-SAN PEDRO, *II.*

ENERGY DEVELOPMENT
CORPORATION and HON.
ARVIN SADIRI B.
BALAGOT, Presiding Judge
of the Regional Trial Court,
Branch 17 of Kidapawan City,
Respondents.

Promulgated:

JUN 30 2020

4:06 p.m.

X-----X

DECISION

RINGPIS-LIBAN, *J.:*

Before the Court is a *Petition for Certiorari (with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction)*¹ filed on May 7, 2018 by City of Kidapawan, Elsa C. Palmones, in her capacity as the City Treasurer of Kidapawan City, and Ofelia Gementiza-Valencia, in her capacity as the City Assessor of Kidapawan City, against private respondent Energy Development Corporation (EDC) and public respondent Presiding Judge Arvin Sadiri B. Balagot of Regional Trial Court (RTC) – Branch 17 of Kidapawan City, praying for the annulment and setting aside of the *Orders* dated February 7, 2018² and March 19, 2018³, including the *Writ of Preliminary Injunction* dated March 22, 2018, issued by said public respondent in Civil Case No. 2018-330, entitled

¹ Exhibit "P-2", Docket – Vol. 1, pp. 9 to 31.

² Exhibit "P-3", Docket – Vol. 1, pp. 32 to 35.

³ Exhibit "P-4", Docket – Vol. 1, pp. 36 to 38.

Energy Development Corporation, Plaintiff, versus City of Kidapawan; Hon. Elsa C. Palmones, in her capacity as the City Treasurer of Kidapawan City; and Hon. Ofelia Gementiza-Valencia, in her capacity as the City Assessor of Kidapawan City, Defendants.

The dispositive portions of the said assailed Orders respectively read as follows:

Order dated February 7, 2018:

“**WHEREFORE**, premises considered, the Plaintiff’s application for a Writ of Preliminary Injunction is granted upon a bond fixed in the amount of **Php50,000,000.00** conditioned to pay Kidapawan City whatever damages it may suffer by reason of the injunction if it is found later that EDC is not entitled thereto.

SO ORDERED.”

Order dated March 19, 2018:

“**WHEREFORE**, premises considered, the Defendants’ motion for reconsideration and affirmative defense are **DENIED**. The order granting Plaintiff’s application for a writ of preliminary injunction stands unreconsidered.

SO ORDERED.”

The said *Writ of Injunction* enjoined petitioners and other persons acting on their behalf to proceed with the public auction and from resorting to any other means of posting, publishing, and/or enforcing the warrants of levy of the properties covered by certain tax declarations.

THE PARTIES

Petitioner City of Kidapawan is the component city of the Province of Cotabato. It is a municipal corporation endowed with corporate powers by virtue of its Charter under Republic Act (RA) No. 8500.⁴ Petitioners Elsa C. Palmones and Ofelia G. Valencia are the City Treasurer and City Assessor, respectively, of the local government of Kidapawan City.⁵

Private respondent Energy Development Corporation (EDC) is listed as one of the companies of Lopez Holdings Corporation which is majority-owned ✓

⁴ AN ACT CONVERTING THE MUNICIPALITY OF KIDAPAWAN IN THE PROVINCE OF COTABATO INTO A COMPONENT CITY TO BE KNOWN AS THE CITY OF KIDAPAWAN.

⁵ Par. 8, *Petition for Certiorari*, Docket – Vol. 1, p. 12.

by Lopez, Inc., a private holding and investment entity of the Lopez family.⁶ It is the registered Renewable Energy (RE) Developer of the Geothermal Project and Mt. Apo Geothermal Project (MAGP) for steam production and power generation located in Kidapawan City, North Cotabato covered by Geothermal RE Service Contract (GRESK) No. 2009-10-004 under RA No. 9513 or the "Renewable Energy Act of 2008". The said Projects are integrated RE resource development and generation facilities and considered within the purview of Section 15 of the said law in the availment of the Special Realty Tax rate of 1.5%, as certified by the Department of Energy (DOE).⁷

Public respondent is the Presiding Judge, who issued the assailed Orders.

THE FACTS

Through the letter dated July 22, 2010 addressed to the Office of the City Assessor of the City of Kidapawan,⁸ private respondent EDC requested that its properties therein, other than those comprising the Mindanao I and Mindanao II power plants, be dropped from the assessment roll, or be entered as exempt properties thereat, citing Section 15[c] of the RA No. 9513, and attaching a copy of private respondent EDC's DOE Certificate of Registration as an RE Developer of Geothermal Energy Resources in Kidapawan City, North Cotabato.

In the meantime, petitioner City Treasurer Elsa C. Palmones issued several Notices of Realty Tax Delinquency (with attached Statements of Account) and Second and Final Notice as well as a Final Demand, against private respondent EDC, demanding payment for certain amounts, representing basic and Special Education Fund (SEF) taxes.⁹ She likewise issued several Warrants of Levy against respondent EDC, and the latter's predecessor, the Philippine National Oil Company - Energy Development Corporation (PNOC-EDC).¹⁰

Subsequently, in an apparent reply to a Notice of Delinquency, private respondent EDC, in its letter dated January 9, 2013 (Re: Supplemental Claim for Exemption of EDC's steam field properties located in Kidapawan City) addressed to the Office of the City Assessor of the City of Kidapawan,¹¹ reiterated its position that the assessed properties are exempt from real property tax (RPT) because they are not part of the power plant of Mindanao Geothermal Power Project.

⁶ Par. 9, *Petition for Certiorari*, Docket – Vol. 1, p. 12.

⁷ Exhibits "R-1" and "R-2", Docket – Vol. 2, pp. 108 to 109.

⁸ Exhibit "P-6", Docket – Vol. 1, p. 45.

⁹ Exhibits "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-9-1", "R-9-2", "R-10", Docket – Vol. 1, pp. 110 to 233.

¹⁰ Exhibits "R-10-1" to "R-10-154", Docket – Vol. 1, pp. 234 to 387; Exhibit "P-9", Docket – Vol. 1, p. 88.

¹¹ Exhibit "P-7", Docket – Vol. 1, pp. 46 to 50.

In response to the letters dated July 22, 2010 and January 9, 2013 of private respondent EDC, petitioner City Assessor Ofelia G. Valencia issued the letter dated August 12, 2014,¹² pointing out the following:

“Steam field assets, being primarily and indispensably involved in the production of steam, should therefore be included in the concept of a ‘power plant’ as a generation facility under RA 9513.

Hence, being an integral component of the geothermal ‘power plant’, **steam filed assets, although found outside the power plant, are not exempt from the imposition of real property tax.”**

Consequently, private respondent EDC filed a Petition dated October 20, 2014 before the Local Board of Assessment Appeals (LBAA).¹³ However, private respondent EDC filed the Notice of Dismissal dated January 8, 2018 before the LBAA.¹⁴

On January 12, 2018, private respondent EDC filed a Complaint (With Application for a Temporary Restraining Order and Writ of Preliminary Injunction) against Petitioners before the RTC in Kidapawan City.¹⁵ The said case was docketed as Civil Case No. 2018-330, and was raffled to RTC-Branch 17 of Kidapawan City.

Subsequently, RTC-Branch 17, through public respondent Presiding Judge Arvin Sadiri B. Balagot, issued the assailed Order dated February 7, 2018,¹⁶ granting private respondent EDC’s application for a Writ of Preliminary Injunction, upon posting of a bond in the amount of ₱50,000,000.00.

Petitioners then moved for reconsideration and raised an affirmative defense of lack of jurisdiction, but the same were both denied by the said Presiding Judge of RTC-Branch 17, in the assailed Order dated March 19, 2018.¹⁷

Thereafter, the RTC-Branch 17 issued the assailed Writ of Preliminary Injunction on March 22, 2018,¹⁸ prohibiting Petitioners from proceeding with the public auction and from resorting to any other means of posting, publishing

¹² Annex A of Exhibit “R-11”, Docket – Vol. 1, pp. 415 to 417.

¹³ Exhibit “R-11”, Docket – Vol. 1, pp. 388 to 413.

¹⁴ Exhibit “R-13”, Docket – Vol. 1, pp. 429 to 431.

¹⁵ Exhibit “P-8”, Docket – Vol. 1, pp. 51 to 74.

¹⁶ Exhibit “P-3”, Docket – Vol. 1, pp. 32 to 35.

¹⁷ Exhibit “P-4”, Docket – Vol. 1, pp. 36 to 38.

¹⁸ Exhibit “P-5”, Docket – Vol. 1, pp. 39 to 44.

and/or enforcing the warrants of levy of the properties covered by the tax declarations listed therein.

On May 7, 2018, Petitioners filed the instant Petition for Certiorari (With Prayer for Temporary Restraining Order and Writ of Preliminary Injunction).¹⁹

On July 26, 2018, private respondent EDC filed its Comment (To the Petition for Certiorari dated 2 May 2018).²⁰

After the scheduled hearings regarding Petitioners' prayer for Temporary Restraining Order and Writ of Preliminary Injunction,²¹ and the respective submission of the parties' memoranda,²² the Court denied the said prayer, for lack of factual and legal bases, per its Resolution dated September 18, 2018.²³

Subsequently, upon being granted a period of thirty (30) days,²⁴ private respondent EDC filed its Memorandum on February 4, 2019,²⁵ while Petitioners' Memorandum was submitted on February 20, 2019.²⁶

Private respondent EDC likewise filed a Manifestation (In Support of Comment dated 26 July 2018 and Memorandum dated 27 July 2018) on April 2, 2019.²⁷

The instant case was submitted for decision on May 2, 2019.²⁸

THE ISSUES

In the instant *Petition for Certiorari*, petitioners raise the following issues, to wit:

- "I. Whether the Public Respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in

¹⁹ Docket – Vol. 1, pp. 9 to 31.

²⁰ Docket – Vol. 2, pp. 520 to 542.

²¹ Minutes of the hearing held on, and Order dated, July 10, 2018, Docket – Vol. 1, pp. 90, and 92 to 93, respectively; Minutes of the hearing held on, and Order dated, July 17, 2018, Docket – Vol. 2, pp. 434 to 436.

²² Petitioners' *Memorandum*, Docket – Vol. 2, pp. 439 to 443; Respondent EDC's *Memorandum*, Docket – Vol. 2, pp. 473 to 494.

²³ Docket – Vol. 2, pp. 551 to 559.

²⁴ Resolution dated December 7, 2018, Docket – Vol. 2, pp. 561 to 562.

²⁵ Docket – Vol. 2, pp. 565 to 590.

²⁶ Docket – Vol. 2, pp. 594 to 597.

²⁷ Docket – Vol. 2, pp. 611 to 618.

²⁸ Resolution dated May 2, 2019 Docket – Vol. 2, pp. 645 to 646.

issuing the interlocutory Orders dated 7 February 2018 and 19 March 2018, respectively.

- II. Whether the Public Respondent acquired jurisdiction over the Complaint absent Private Respondent's payment under protest of the tax assessed.
- III. Whether the Public Respondent is barred from taking cognizance of the Complaint since the tax assessments have attained finality for failure of Private Respondent to exhaust administrative remedies."

THE ARGUMENTS OF THE PARTIES

Petitioners aver that a claim for tax exemption from the payment of real property taxes neither involves the legality of the assessment nor the assessor's authority to assess and collect taxes, but relates to the reasonableness or correctness of the assessment, which is a question of fact that should have been raised before the LBAA, after compliance with the mandatory requirement of payment under protest, pursuant to Section 252 of the Local Government Code of 1991 (LGC). Thus, it is Petitioners' proposition that the failure of private respondent EDC to assail the subject tax assessments before the LBAA renders the same final and unappealable.

On the other hand, private respondent EDC counter-argues that public respondent Judge Balagot did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in taking cognizance of, and in refusing to dismiss its *Complaint*, and that Judge Balagot did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in granting its prayer for preliminary injunction.

Private respondent EDC further argues in its Manifestation that the instant Petition should be dismissed outright for failure to submit any Resolution from the Sangguniang Panglunsod of Kidapawan City, showing that petitioners City Assessor and City Treasurer were authorized to sign both the Verification and the Certification of Non-Forum Shopping on behalf of the City of Kidapawan.

THE RULING OF THE COURT

The Court finds the instant Petition for Certiorari bereft of merit.

Before delving on the merits of this case, the Court finds it imperative to resolve private respondent EDC's proposition that the instant Petition for Certiorari should be dismissed outright for failure to submit any Resolution



from the Sangguniang Panglunsod of Kidapawan City showing that petitioners City Assessor and City Treasurer were authorized to sign both the Verification and the Certification of Non-Forum Shopping on behalf of petitioner City of Kidapawan.

Petitioners City Treasurer and City Assessor are not duly authorized to file the instant Petition for Certiorari and to sign the certification against forum shopping.

Section 1, Rule 65 of the Revised Rules of Court provides, in part, as follows:

“SECTION 1. *Petition for Certiorari.* – xxx

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.” (*Emphases ours*)

In *Mediserve, Inc. vs. Court of Appeals, et al.*,²⁹ the Supreme Court said:

“Under Rule 46, Section 3, paragraph 3 of the 1997 Rules of Civil Procedure, as amended, petitions for certiorari must be verified and accompanied by a sworn certification of non-forum shopping. A pleading is **verified** by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records. The party need not sign the verification. A party’s representative, lawyer or any person who personally knows the truth of the facts alleged in the pleading may sign the verification.

On the other hand, a **certification of non-forum shopping** is a certification under oath by the plaintiff or principal party in the complaint or other initiatory pleading asserting a claim for relief or in a sworn certification annexed thereto and simultaneously filed therewith, (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he

²⁹ G.R. No. 161368, April 5, 2010.

should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

The requirement that petitioner or principal party should sign the certificate of non-forum shopping applies even to corporations, considering that the mandatory directives of the Rules of Court make no distinction between natural and juridical persons. xxx.” (Emphases ours)

Furthermore, in *Barangay Tongonan, Ormoc City vs. Hon. Apolinario M. Buaya, et.al.*,³⁰ the Supreme Court likewise made a distinction between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping, in this wise:

“2) **As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective.** The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) **Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.**

4) **As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of ‘substantial compliance’ or presence of ‘special circumstances or compelling reasons.’” (Emphases ours)**

It is thus clear from the foregoing that non-compliance with the requirement of verification does not necessarily render the pleading fatally defective, while non-compliance with the requirement of certification against forum shopping is generally not curable.

In this case, the “VERIFICATION AND CERTIFICATION” signed by petitioners City Treasurer and City Assessor, accompanying the instant Petition for Certiorari reads:

³⁰ G.R. No. 204183, June 20, 2018.

“We, Elsa C. Palmones and Ofelia G. Valencia, in our capacity as City Treasurer and City Assessor, respectively of the City Government of Kidapawan, under oath depose and say:

We are the petitioners in the above-entitled special civil action; We caused the preparation of this Petition for Certiorari; we have read the contents thereof and the facts stated therein are true and correct of our personal knowledge and/or on the basis of copies of documents and records in our possession.

We have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency; To the best of our knowledge and belief, no such action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other tribunal or agency; If we should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or any other tribunal or agency, we undertake to report that fact within five (5) days therefrom to this Honorable Court.

Kidapawan City, North Cotabato, Philippines, 2 May 2018.”

The Court finds no error or defect in the verification part of the foregoing, as there was no controverting evidence offered by private respondent EDC that could dispute the statements made by petitioners City Treasurer and City Assessor that the facts stated in the instant Petition for Certiorari were true and correct and based on their personal knowledge and/or on the basis of copies of documents and records in their possession. However, We cannot say the same with regard to Petitioners’ compliance with the requirement of certification against non-forum shopping. This is so because the part pertaining to certification of non-forum shopping is not accompanied by proof that petitioners City Treasurer and City Assessor were authorized to file the same Petition.

Local government units, including petitioner City of Kidapawan, have the power to sue, pursuant to Section 22 of the LGC, to wit:

“SEC. 22. *Corporate Powers.*

- (a) **Every local government unit, as a corporation, shall have the following powers:**

xxx

xxx

xxx



(2) **To sue** and be sued;" (*Emphases and underscoring supplied*)

However, Section 458(a)(1)(viii) of the LGC of 1991 provides as follows:

"SEC. 458. *Powers, Duties, Functions and Compensation.*— (a) **The Sangguniang Panglungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to section 16 of this Code and in the proper exercise of the corporate powers of the city as provided under section 22 of this Code, and shall:**

- (1) **Approve ordinances and pass resolutions necessary for an efficient and effective city government, and in this connection, shall:**

xxx

xxx

xxx

- (vii) **Subject to the provisions of this Code and pertinent laws, determine the powers and duties of officials and employees of the city;" (*Emphases and underscoring supplied*)**

Based on the foregoing provision, the Sangguniang Panglungsod is mandated, *inter alia*, to approve ordinances and pass resolutions in the proper exercise of its power to sue. Relative thereto, the said Sanggunian shall approve and pass resolutions, among others, determining the powers and duties of city officials, subject to the provisions of the LGC and pertinent laws. Otherwise stated, except when the power to sue is explicitly granted or designated to a particular city official under the law, a prior ordinance or resolution from the Sangguniang Panglungsod is necessary for any city official, such as petitioners City Treasurer and City Assessor, to exercise such power.

To be sure, the LGC grants certain powers and duties to the local treasurer and assessor. However, there is nothing therein, which authorizes the said officials from filing an appeal in the appropriate court on behalf of the concerned local government unit. Furthermore, it is noteworthy that no such authorization or function for the said local officials was granted under RA No. 8500, the charter of petitioner City of Kidapawan.

Correspondingly, for petitioners City Treasurer and City Assessor to exercise the power of petitioner City of Kidapawan to file the instant Petition for Certiorari, including the issuance of the accompanying certificate against non-forum shopping, the pertinent ordinance or resolution from the

Sangguniang Panglungsod of the City of Kidapawan must have been first enacted or issued.

In any event, even granting that petitioners City Treasurer and City Assessor have the authority to file the instant Petition for Certiorari, the same still lacks merit.

Public respondent Judge Balagot did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when he issued the assailed Orders.

The filing of a petition for *certiorari* is governed by Section 1, Rule 65 of the Revised Rules of Court, which reads:

“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 its or his 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.

xxx xxx xxx.”

A writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. It cannot be used for any other purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction.³¹

The term “grave abuse of discretion” was explained by the Supreme Court in the case of *Yu vs. Judge Reyes-Carpio, et al.*,³² in this wise:

“The term grave abuse of discretion has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion **when such act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and**

³¹ *Bugaoisan vs. Owi Group Manila and Morris Corporation*, G.R. No. 226208, February 7, 2018.

³² G.R. No. 189207, June 15, 2011.

gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Furthermore, the use of a petition for certiorari is restricted only to truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void. From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike an act down for having been done with grave abuse of discretion **if the petitioner could manifestly show that such act was patent and gross.**" (*Emphases ours*)

As a corollary, in *Air Transportation Office vs. Court of Appeals, et al.*,³³ the Supreme Court held that there is grave abuse of discretion when an act is one contrary to the Constitution, the law or jurisprudence, or executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias. Thus, the burden of proof lies upon the party asserting the existence of grave abuse of discretion.

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.³⁴ The purpose of which is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated.³⁵ Thus, its sole aim is to preserve the *status quo* or the last actual, peaceable, and uncontested situation which precedes a controversy until the merits of the case can be fully heard.³⁶

Section 3 of Rule 58 provides the grounds for the issuance of a preliminary injunction:

"SEC. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:

(a) That 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;

✓

³³ G.R. No. 173616, June 25, 2014.

³⁴ Rules of Court, Rule 58, Section 1.

³⁵ *First Global Realty and Development Corporation vs. Christopher Son Agustin*, G.R. No. 144499, February 19, 2002, citing *Republic of the Philippines vs. Silerio*, 338 Phil. 784, 791-792 (1997) [Per J. Romero, Second Division].

³⁶ *Spouses Laus vs. Optimum Security Services, Inc.*, G.R. No. 208343, February 3, 2016.

(b) That 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) That 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.”

Thus, for a court to decide on the propriety of issuing a writ of preliminary injunction, it must only inquire into the existence of two things: (1) the applicant’s actual and existing right sought to be protected; and (2) an urgent and paramount necessity for the writ to be issued, in order to prevent grave and irreparable injury.³⁷

However, in establishing compliance with the above-stated requisites, the evidence to be submitted by private respondent EDC need not be conclusive and complete, since only *prima facie* evidence or sampling is required to give the Court an idea of the justification for the preliminary injunction pending the decision of the case on the merit.³⁸

In the case *a quo*, private EDC anchors its right in *esse* or “*actual and existing right*” on the Certification dated July 25, 2011,³⁹ issued by the Undersecretary of the Department of Energy, Atty. Jose M. Layug, Jr., confirming its status as a registered RE Developer of Geothermal Project for steam production and power generation in Kidapawan City, North Cotobato; and certifying that its MAGP is an integrated RE resource development and generation facilities.

However, Petitioners question the validity of the said Certificate as there is no showing that Undersecretary Layug was the head of the Renewable Energy Management Bureau of the DOE, which, accordingly, is the authorized Office that can issue such certificate under Section 26 of RA No. 9513 or the “*Renewable Energy Act of 2008*”.

At this juncture, We stress that belief, suspicion and conjectures cannot overcome the presumption of regularity and legality which attaches to the questioned Certification, which, in turn, was issued by a public official of the DOE. Thus, in the absence of contrary evidence, the contents of the said Certification may be deemed as *prima facie* evidence of the facts stated therein,

³⁷ *Ferdinand V. Sevilla vs. Commission on Elections and Ranie B. Gupit*, G.R. No. 227797, November 13, 2018, citing *Evy Construction and Development Corporation vs. Valiant Roll Forming Sales Corporation*, G.R. No. 207938, October 11, 2017.

³⁸ *Bicol Medical Center, represented by Dr. Efren SJ Nerva, et al., vs. Noe B. Botor, et al.*, G.R. No. 214073, October 4, 2017.

³⁹ Exhibit “R-1”, Docket – Vol. 1, p. 108.

and that Undersecretary Layug is presumed to have issued the same in accordance with the requirements provided by law.

Moreover, the Court notes that no counter-evidence was presented by petitioners that could belie private respondent EDC's status as registered RE Developer of Geothermal Project for steam production and power generation, and that its MAGP is an integrated RE resource development and generation facilities.

Furthermore, this Court is also convinced that grave and irreparable injury will result if petitioners are not enjoined from further implementing and enforcing the *Warrants of Levy* or of collecting the alleged unpaid real property taxes. Jurisprudence provides that injury is considered irreparable if there is no standard by which its amount can be measured with reasonable accuracy.”⁴⁰

In this case, the alleged injury which private respondent EDC stands to suffer if petitioners are not enjoined from further implementing and enforcing the Warrants of Levy, or of collecting the alleged unpaid RPT. We fully agree with the disquisitions made by Public Respondent, as stated in the Order dated February 7, 2018, to wit:

“xxx if Kidapawan would go on to sell EDC's non-power plant assets, such as the geothermal fields, and those assets would be acquired by another party during the public auction, EDC's operation will surely be disrupted. As a result, EDC would fail to deliver the electricity to the entities that it contracted with, thereby tarnishing its good name and reputation. This damage to its reputation cannot be measured in money.

Further, since the electricity that MAGP generates is quite substantial, a disruption on its operation will substantially reduced the power supply in Mindanao. That may result to rotating brown-outs not only in Mindanao, but in Kidapawan City as well. If that happens, the economic damage to Kidapawan might be greater to the amount that it seeks to collect.”⁴¹

Clearly, the above-mentioned injuries that private respondent EDC might have sustained or would sustain are irreparable and cannot be remedied by a simple computation of damages. Thus this Court is one with the findings of the RTC-Branch 17 that there is a pressing necessity to grant private respondent EDC's application for writ of preliminary injunction in order to prohibit Petitioners from proceeding with the public auction and from resorting to any other means of posting, publishing and/or enforcing the warrants of levy of the properties covered by the tax declarations listed therein.

⁴⁰ *The Social Security Commission vs. Hon. Judge Froilon Boyona, et al.*, G.R. No. L-1355, May 30, 1962.

⁴¹ *Docket* – Vol. I, pp. 34 to 35.

After all, whatever damages that Kidapawan City may incur by reason of the issuance of the writ may be amply protected by the bond posted by private respondent EDC.

The Court *a quo* has jurisdiction.

Petitioners further raise the issue of whether the Court *a quo* has jurisdiction to entertain private respondent EDC's *Complaint* in Civil Case No. 2018-330.

We rule in favor of Respondents.

In *City of Lapu-Lapu vs. Philippine Economic Zone Authority, etseq.* ("*Lapu-Lapu City case*"),⁴² the Supreme Court said:

"The proper remedy of a taxpayer depends on the stage in which the local government unit is enforcing its authority to collect real property taxes. For the guidance of the members of the bench and the bar, we reiterate the taxpayer's remedies against the erroneous or illegal assessment of real property taxes.

Exhaustion of administrative remedies under the Local Government Code is necessary **in cases of erroneous assessments where the correctness of the amount assessed is assailed.** The taxpayer must first pay the tax then file a protest with the Local Treasurer within 30 days from date of payment of tax. If protest is denied or upon the lapse of the 60-day period to decide the protest, the taxpayer may appeal to the Local Board of Assessment Appeals within 60 days from the denial of the protest or the lapse of the 60-day period to decide the protest. The Local Board of Assessment Appeals has 120 days to decide the appeal.

If the taxpayer is unsatisfied with the Local Board's decision, the taxpayer may appeal before the Central Board of Assessment Appeals within 30 days from receipt of the Local Board's decision.

The decision of the Central Board of Assessment Appeals is appealable before the Court of Tax Appeals En Banc. The appeal before the Court of Tax Appeals shall be filed following the procedure under Rule 43 of the Rules of Court.



⁴² G.R. Nos. 184203 and 187583, November 26, 2014.

The Court of Tax Appeals' decision may then be appealed before this court through a petition for review on certiorari under Rule 45 of the Rules of Court raising pure questions of law.

In case of an illegal assessment where the assessment was issued without authority, exhaustion of administrative remedies is not necessary and the taxpayer may directly resort to judicial action. The taxpayer shall file a complaint for injunction before the Regional Trial Court to enjoin the local government unit from collecting real property taxes.

The party unsatisfied with the decision of the Regional Trial Court shall file an appeal, not a petition for certiorari, before the Court of Tax Appeals, the complaint being a local tax case decided by the Regional Trial Court. The appeal shall be filed within fifteen (15) days from notice of the trial court's decision.

The Court of Tax Appeals' decision may then be appealed before this court through a petition for review on certiorari under Rule 45 of the Rules of Court raising pure questions of law.

In case the local government unit has issued a notice of delinquency, the taxpayer may file a complaint for injunction to enjoin the impending sale of the real property at public auction. In case the local government unit has already sold the property at public auction, the taxpayer must first deposit with the court the amount for which the real property was sold, together with interest of 2% of per month from the date of sale to the time of the institution of action. The taxpayer may then file a complaint to assail the validity of the public auction. The decisions of the Regional Trial Court in these cases shall be appealable before the Court of Tax Appeals, and the latter's decisions appealable before this Court through a petition for review on certiorari under Rule 45 of the Rules of Court.”
(Emphases and underscoring ours)

Based on the foregoing doctrinal pronouncements, the remedy of a taxpayer depends on the stage in which the concerned local government unit is enforcing its authority to collect real property taxes; and in case of an illegal assessment where the assessment was issued without authority, exhaustion of administrative remedies is not necessary and the taxpayer may directly resort to judicial action. The taxpayer shall file a complaint for injunction before the RTC to enjoin the local government unit from collecting real property taxes. Specifically, in case the local government unit has issued a notice of delinquency, the taxpayer may file a complaint for injunction to enjoin the impending sale of the real property at public auction.



In this case, it is clear that City of Kidapawan is already at the stage of collecting the real property taxes supposedly due petitioner. Petitioner City Treasurer has already issued several Notices of Realty Tax Delinquency (with attached Statements of Account) and Second and Final Notice as well as a Final Demand, against private respondent EDC, demanding payment for certain amounts, representing basic and SEF taxes.⁴³ Furthermore, the same local official likewise issued several Warrants of Levy against respondent EDC, and the latter's predecessor, PNOC-EDC.⁴⁴

Correspondingly, on the basis of the *Lapu-Lapu City* case, the Court *a quo* can properly take cognizance of private respondent EDC's Complaint for injunction, and may therefore grant an application for the issuance of a writ of preliminary injunction.

Prescinding from the foregoing discussions, the Court concludes that no grave abuse of discretion can be attributed to public respondent Judge when he issued the assailed Orders.

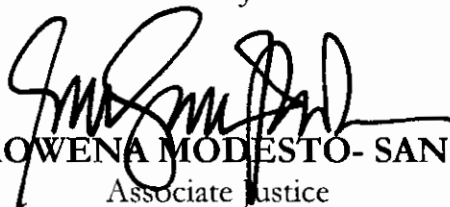
WHEREFORE, in light of the foregoing considerations, the instant Petition for Certiorari is **DISMISSED**.

SO ORDERED.


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice


MARIA ROWENA MODESTO- SAN PEDRO
Associate Justice

⁴³ Exhibits "R-3", "R-4", "R-5", "R-6", "R-7", "R-8", "R-9", "R-9-1", "R-9-2", "R-10", Docket – Vol. 1, pp. 110 to 233.

⁴⁴ Exhibits "R-10-1" to "R-10-154", Docket – Vol. 1, pp. 234 to 387; Exhibit "P-9", Docket – Vol. 1, p. 88.

ATTESTATION

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


ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ROMAN G. DELROSARIO
Presiding Justice