



## Ipilan Nickel Corporation

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April 27, 2023

**RED Lormelyn E. Claudio, CESO IV**  
DENR IV-B Regional Executive Director  
DENR by the Bay 1515 L&S Bldg., Roxas Blvd.,  
Manila



Dear RED Claudio:

*INC Petition for Certiorari, Mandamus, and Prohibition against Brooke's Point Mayor Cesareo Benedito, Jr. and Pastor Job Lagrada*

We are writing to inform this office that, on April 13, 2023, Ipilan Nickel Corporation (INC) filed a Petition for Mandamus, Certiorari, and Prohibition ("Petition")<sup>1</sup> against Brooke's Point Mayor Cesareo R. Benedito, Jr. ("Mayor Benedito") and Pastor Job Z. Lagrada ("Pastor Lagrada"). The case, docketed as Special Civil Action No. 23-0008, is pending before Brooke's Point Regional Trial Court (RTC) Branch 165 ("BPT RTC Br. 165").

In the Petition, docketed as Special Civil Action No. 23-0008, INC sought the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction to: i) compel the Office of the Municipal Mayor to issue the 2023 Mayor's Permit of INC, ii) enjoin Mayor Benedito from implementing the closure and Cease and Desist orders issued against INC, iii) restrain him from issuing or extending the rally permits issued to anti-mining protesters who illegally entered and obstructed INC Main Haul Roads, and iv) perpetually prohibit Mayor Benedito, his agents, counsel, staff, representatives, assigns, or successors-in-interests, and all other persons claiming authority from him or acting on his behalf, all prohibited acts under the Petition.

On April 17, 2023, BPT RTC Br. 165 conducted a summary hearing to evaluate the propriety of issuing a Temporary Restraining Order against Mayor Benedito and Pastor Lagrada. INC is awaiting the court's resolution on the Petition and will update your office on other developments.

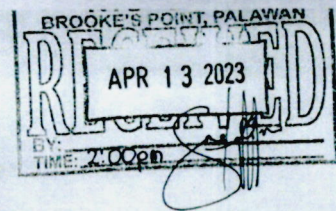
Thank you very much.

  
**Atty. Dante R. Bravo**  
President

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<sup>1</sup> Annex "A".





REPUBLIC OF THE PHILIPPINES  
FOURTH JUDICIAL REGION  
REGIONAL TRIAL COURT  
BRANCH 165 - BROOKE'S POINT, PALAWAN

IPILAN NICKEL  
CORPORATION,  
*Petitioner,*

- versus -

SPECIAL CIVIL ACTION  
Case No. 23-0008

HON. CESAREO R.  
BENEDITO, JR., in his  
capacity as Municipal  
Mayor of Brooke's Point,  
Palawan, and JOB Z.  
LAGRADA,  
*Respondents.*

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**PETITION FOR MANDAMUS,  
CERTIORARI, AND PROHIBITION**  
(with Prayer for Temporary Restraining Order and/or  
Writ of Preliminary Injunction)

Petitioner IPILAN NICKEL CORPORATION ("INC"), by  
counsel, respectfully files the present Petition for Mandamus,  
Certiorari, and Prohibition, and in support thereof, states:

**NATURE OF THE PETITION AND TIMELINESS**

1. The instant Petition, filed pursuant to Sections 1 to 3 of Rule 65 of the Rules of Court, is an application for extraordinary writs from this Honorable Court, there being no other plain, speedy, and adequate remedy under the law against the Respondents' unlawful, sinister, and capricious acts -

a. writ of mandamus, as Public Respondent deliberately and unlawfully excludes Petitioner INC from the enjoyment of its right to engage in mining in accordance with its MPESA in the Municipality of Brooke's Point, Palawan;



b. writ of certiorari, assailing Public Respondent's: (1) Memorandum Order No. 2023-006 directing INC to "stop all (its) operations effective immediately," and Memorandum Order No. 2023-087, "reiterating his order to stop all your operations effective immediately," and (2) Memorandum Order Nos. 2023-054, 2023-056, 2023-065, 2023-072, 2023-080, 2023-089 and 2023-095 granting Private Respondent's request "to conduct public assembly/rally," and extending the validity thereof to 28 February 2023, and thereafter, to 7 March 2023, 14 March 2023, 21 March 2023, 27 March 2023, and 4 April 2023 for having been rendered with grave abuse of discretion, amounting to lack or excess of jurisdiction; and

c. writ of prohibition, to command the Public Respondent, to desist from further taking acts to shut down Petitioner INC, and from further granting and/or extending permits for public assembly / rally, as aforementioned, as such acts and proceedings are tainted with grave abuse of discretion, being an offshoot of the assailed Memorandum Orders.

2. Considering that the threat of Public Respondent, acting by himself and through others, to shut down Petitioner INC's operations is imminent, and considering further that irreparable injury, as will be explained below, will result unless immediate relief will be granted, Petitioner likewise prays for a temporary restraining order and / or an injunctive relief from this Honorable Court.

3. Certified true copies of the aforementioned Memorandum Orders are hereto attached as follows:

Memorandum Order No. 2023-006 - **Annex A**  
Memorandum Order No. 2023-054 - **Annex B**  
Memorandum Order No. 2023-056 - **Annex C**  
Memorandum Order No. 2023-065 - **Annex S**  
Memorandum Order No. 2023-072 - **Annex V**  
Memorandum Order No. 2023-080 - **Annex W**  
Memorandum Order No. 2023-087 - **Annex X**  
Memorandum Order No. 2023-089 - **Annex Y**  
Memorandum Order No. 2023-095 - **Annex EE**



The latest - Memorandum Order No. 2023-095, was received by INC on 28 March 2023. Thus, the instant Petition is filed within the prescribed period of sixty (60) days under Rule 65, Section 4 of the Rules of Court.

4. The requisite verification and certificate against forum-shopping, with pertinent board resolution, are hereto attached as **Annexes D and E**.

5. Public Respondent, a local executive, was discharging quasi-judicial functions when he issued the assailed Memorandum Orders. This places Public Respondent within the scope of the following provisions of the Rules of Civil Procedure on certiorari and prohibition:

**Section 1. Petition for certiorari.** — When any tribunal, board or officer **exercising judicial or quasi-judicial functions** has acted without or in excess 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.

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**Section 2. Petition for prohibition.** — When the proceedings of any tribunal, corporation, board, officer or person, **whether exercising judicial, quasi-judicial or ministerial functions**, are 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 other 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 commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.



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**Section 3. *Petition for mandamus.*** — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

#### **PARTIES**

6. Petitioner INC is a corporation existing and organized under the laws of the Philippines. It operates the Ipilan Nickel Mining Project in Brooke's Point, Palawan. It may be served summons, notices, and other processes through the undersigned counsel at the 4<sup>th</sup> and 6<sup>th</sup> Floors, BDO Towers Paseo, 8741 Paseo de Roxas, Makati City.

7. Public Respondent HON. CESAREO R. BENEDITO, JR., is being impleaded in his capacity as Municipal Mayor of Brooke's Point, Palawan, for: (1) having unlawfully excluded Petitioner INC from the enjoyment of its rights, to which it is entitled; (2) having issued the assailed Memorandum Orders with grave abuse of discretion, amounting to lack or excess of jurisdiction; and (3) conducting proceedings and taking action to close down Petitioner INC's operations, and allowing / extending public assembly / rally against the latter. He may be served summons, notices, and other processes through the Office of the Municipal Mayor, Brooke's Point, Palawan.



8. Private Respondent JOB Z. LAGRADA is impleaded as such, as it appears that the assailed Memorandum Order Nos. 2023-054, 2023-056, and 2023-065, and other related memorandum orders were issued by the Public Respondent upon his application. He may be served summons, notices, and other processes through his last known address - "Proper 1, Barangay Ipilan, Brooke's Point, Palawan."

#### **STATEMENT OF FACTS**

9. As with any other entity doing business in the municipality of Brooke's Point, Palawan, Petitioner INC was issued the requisite mayor's permit for the year 2022. Needless to say, INC had to renew its mayor's permit for the year 2023.

10. The Revised Revenue Code of the Municipality of Brooke's Point, specifically Section 3A.05 of Ordinance No. 2020-34, provides that a mayor's permit has a continuing validity until its renewal within the first twenty (20) days of January of each year.

11. The above provision is consistent with Section 167 of the Local Government Code, to wit:

SECTION 167. Time of Payment. - Unless otherwise provided in this Code, all local taxes, fees, and charges shall be paid within the first twenty (20) days of January or of each subsequent quarter, as the case may be. The Sanggunian concerned may, for a justifiable reason or cause, extend the time of payment of such taxes, fees, or charges without surcharges or penalties, but only for a period not exceeding six (6) months.

12. Thus, it came as a surprise to Petitioner INC when, even before 20 January 2023, or specifically, on 3 January 2023, Respondent Mayor Benedito issued the first assailed Memorandum Order No. 2023-006, directing Petitioner INC to "stop all (its) operations effective immediately" on the ground that it had yet to secure the renewal of its mayor's permit. The pertinent portion of the Memorandum Order reads:



The effectivity of the Business/Mayor's Permit, which was issued to Ipilan Nickel Corporation by the then Acting Municipal Mayor had expired last December 31, 2022.

In view thereof, you are hereby **ordered to stop all your operations effective immediately until such time that you have secured the renewal of Ipilan Nickel Corporation's Business/Mayor's Permit** for CY-2023.

Failure on your part in heeding this order will be considered as a violation of existing local laws that could cause for this local government to deny any application and/or renewal of your Business/Mayor's Permit. (*Underscoring and emphasis ours.*)

13. It bears stressing that the above Memorandum Order contravenes Ordinance No. 2020-34 which provides for the "continuing validity" of mayor's permits for the first 20 days of January. More to the point, the Memorandum Order is unreasonable as it implies that all entities doing business in Brooke's Point, Palawan, should stop operations by the end of each year, until their respective permits have been renewed the following year. Unfortunately, the unreasonableness underlying the Memorandum Order appears to only target the Petitioner. There seems to be no other business entity in Brooke's Point ordered to stop operations, pending renewal of its mayor's permit, except for Petitioner INC.

14. Thus, Petitioner INC sent the attached Letter dated 4 January 2023 to Respondent Mayor Benedito, a copy of which is hereto attached as **Annex G**, and which pertinently reads:

We draw your attention to Section 3A.05 of Ordinance No. 2020-34 or the Revised Revenue Code of the Municipality of Brooke's Point, which provides that a mayor's permit has a continuing validity until its renewal within the first 20 days of January of each year. This follows the mandate of Section 167 of the Local Government Code requiring the payment of "all local taxes, fees, and charges" within the "first twenty (20) days of January or of each subsequent quarter, as the case may be." Before securing their business permits, businesses must pay their local business taxes (LBT),



computed based on the gross receipts or sales in the immediately preceding year. If the current taxable year is 2023, the basis should be the gross receipts or sales from 2022. Undeniably, the legal framework and prevailing practice give establishments, including INC, the benefit of the period (*i.e.*, until January 20) within which to discharge their payables and renew their permits. There is no need for a business stoppage pending the renewal of permits.

Were it otherwise, all businesses, particularly those in Brooke's Point, would have to discontinue their operations immediately after December 31, 2022, cutting off the lifelines of hundreds of thousands of workers and their dependents until permits are renewed. The consequences can be chaotic and absurd for a community still reeling from the economic backlash of the pandemic.

INC regrets the circumstances indicating malice in the issuance of the Memorandum. First, you dated and served it immediately after the long holidays and at a time when low-pressure weather was threatening to impact the Municipality. INC has always involved itself in rescue and relief operations. Second, no sooner had INC received the Memorandum than your public information arm posted your directive to close down INC's operations on Facebook, singling INC out with smug pleasure as a fodder for idle talks. Third, you copied the Philippine National Police with the Memorandum to ensure that a chilling effect is sent to the organization and its stakeholders.

You are aware that the Ipilan Nickel Project is a joint public-private enterprise between the Republic of the Philippines as principal and its chosen contractor. Only the national government, through the Department of Environment and Natural Resources (DENR), can cancel the relevant Mineral Production Sharing Agreement (MPSA) or halt INC's mineral operations. It would be an excess or abuse of authority if a local official exercised either such power against INC, especially because INC has not been adjudged to have breached any of the terms and conditions of the MPSA or violated any law or regulation.



15. The partiality and ill-motive of Respondent Mayor Benedito to derail the lawful operations of INC became more apparent when, despite reasonable demand, he failed to address the request of the company, in its January 9, 2023 letter, to be furnished copies of the orders served by Respondent Mayor Benedito against other businesses in Brooke's Point which have not yet applied for and renewed its mayor's Permit. INC wrote as follows:

"In the spirit of transparency, we would like to request for copies of letters of Memorandum Circulars, which you also wrote and issued to all other business establishments similarly situated as INC about the expiration of their permits, and in which you ordered them all to stop their operations immediately.

Interestingly, we were able to secure a screenshot of a now-deleted Facebook post on your official Facebook page, Municipal Information Office-LGU Brooke's Point, about the issuance of your letter ordering INC to stop its operations. For this purpose, we would like to confirm if you also caused the posting of these letters or Memorandum Circulars, if any, to other business establishments on the same Facebook page with the same tenor and timing as what you did to INC."

16. Petitioner INC subsequently submitted the requirements for the renewal of its mayor's permit, through its Letter dated 10 January 2023, hereto attached as **Annex T**. Enclosed with the said Letter, were the following documents, in support of the application for renewal: (a) accomplished renewal application form; (b) Barangay Clearance; (c) Mineral Production Sharing Agreement (MPSA); (d) Letter from National Commission on Indigenous Peoples stating that CNMEC is not required to secure Certificate Precondition; (e) Environmental Clearance Certificate (ECC); (f) Strategic Environmental Plan (SEP) Clearance; (g) provisional Miscellaneous Lease Agreement (MLA); (h) Certificate of Approval of its Environmental Protection and Enhancement Program and Final Mine Rehabilitation and Decommissioning Plan.



17. In his Letter dated 20 January 2023, hereto attached as **Annex H**, Respondent Mayor Benedito enumerated the "formal and legal" requirements which Petitioner INC allegedly should comply with.

18. As the additional "formal and legal" requirements outlined in the Letter dated 20 January 2023 had no basis in law, Petitioner INC replied through its Letter dated 31 January 2023, hereto attached as **Annex I** in this wise:

As required, we provide you with the following information and documents as enclosed:

1. Sworn Declaration of Gross Sales of INC for 2022;
2. Barangay clearance issued by Barangay Maasin; and
3. The total number of dump trucks owned by the company is 16.

We would like to point out that INC is not required to apply for the business permit of Celestial Nickel Mining Exploration Corporation (CNMEC) since it is INC that is doing business in the Municipality of Brooke's Point and not CNMEC. INC assumed all the rights and interests of CNMEC in the relevant Mineral Production Sharing Agreement (MPSA) under an operating agreement approved by the MGB.

Also, INC is only required to submit the barangay clearance from the barangay where its mine site is located, which is in Barangay Maasin. At any rate, Section 8.2.3(a) of Joint Memorandum Circular (JMC) No. 01-2021 dated April 13, 2021 issued by the Anti-Red Tape Authority (ARTA), Department of Trade and Industry (DTI), Department of Interior and Local Government (DILG), and Department of Information and Communications Technology (DICT) provides that barangay clearances related to business permit applications shall be integrated and processed by the Business Processing and Licensing Office (BPLO) and such need not be secured separately in the barangays where the establishment is located. In the same way, the other permits and clearances that you have mentioned are also integrated in INC's business permit renewal application.



As to the legal requirements, those are not among the requirements for business permit renewal as provided for under Section 8.2.1(a) of JMC No. 01-2021. In case of additional documents, only those enumerated in Annex 4, in relation to Section 8.2.2, of JMC No. 01-2021 are required to be submitted. In INC's case, it only needs to submit the permits or clearances issued from the Department of Environment and Natural Resources (DENR), which INC has already provided your office in its January 10, 2023 business permit renewal application.

In fact, the enumerated requirements for mayor's permit renewal uploaded in your local government unit's (LGU) official website only require the submission of the barangay clearance and the basis for computing taxes, fees, and charges. Clearly, your additional requirements for INC's business permit renewal are not only baseless, they are also underhanded, prohibitive, discriminatory.

In addition, LGU Brooke's Point failed to implement the electronic Business One-Stop Shop (eBOSS) required under Republic Act No. 11032 or the Ease of Doing Business and Efficient Government Service Delivery Act of 2018, and, instead, made it even more difficult for business establishments, specifically INC, to renew its business permit, a clear contravention to the pronouncements of ARTA and President Ferdinand R. Marcos, Jr. requiring LGUs to streamline the business registration and renewal.

With the submission of the complete requirements, we expect to proceed with the next steps, particularly on INC's payment of the local business tax, for it to secure the 2023 business permit.

19. Despite its objections, Petitioner INC has continued in its efforts to comply with the additional "formal and legal" requirements imposed by Public Respondent Mayor Benedito, if only to secure the renewal of its mayor's permit. It has, however, encountered enormous difficulties and unreasonable delays from offices, notably under Respondent Mayor Benedito. For instance, as can be seen from the Letter dated 8 February 2023, addressed to the MENRO of Brooke's Point, hereto attached as **Annex J**:



However, despite our client's submission, your office has unjustifiably imposed additional requirements for the issuance of the MENRO Certification, including but not limited to: Environmental Protection Program/Plan, Mine Development and Rehabilitation Plan, Revegetation Plan, Ecological Solid Waste Management Plan, SP Endorsement (Latest), Barangay Endorsement (Latest), ECAN Endorsement, PAMB Clearance, and Notarized SPA. These demands are not enumerated in the Municipal Government of Brooke's Point Citizen's Charter 2021 (3<sup>rd</sup> Edition) and serve no purpose other than derail a legitimate mining company's operations.

20. The threat of closure and / or baseless violations remain, despite the fact that Petitioner INC has already complied with the requirements for the renewal of its mayor's permit. In fact, Respondent Mayor Benedito issued a Letter captioned as a supposed "NOTICE OF VIOLATION" and dated 28 March 2023, in which he reiterated his baseless claims relative to his non-issuance of the mayor's permit, and ordered INC to show cause in relation to his desire to issue a Cease-and-Desist Order, hereto attached as **Annex FF**.

21. Apparently still unsatisfied with his legal persecution of INC, Respondent Mayor issued public statements and was quoted to have said that Petitioner INC has been "blatantly disrespecting the law by ignoring the order of the Office of the Mayor to stop operations."<sup>1</sup> Respondent Mayor has also reportedly requested that the MPSA and ECC of Petitioner INC be cancelled.<sup>2</sup> In fact, when he was still running for his present post, Respondent Mayor publicly declared and promised during a campaign speech that he will immediately revoke the Mayor's permit previously issued to INC in collaboration with Vice Mayor Jean Feliciano and the Sangguniang Bayan of Brooke's Point. The video of Respondent Mayor's public declarations can be publicly viewed through Sangguniang Bayan Member Ton Abengonza's Facebook Page<sup>3</sup> and is attached hereto as **Annex GG**.

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<sup>1</sup><https://www.philstar.com/headlines/climate-and-environment/2023/02/24/2247371/local-govt-residents-brookes-point-call-dennr-stop-operations-mining-firm>

<sup>2</sup> <https://bilyonaryo.com/2023/02/24/please-stop-joseph-sys-mining-firm-from-destroying-our-land-brookes-point-mayor-asks-dennr-yulo-to-issue-cdo-cancel-contract-of-ipilan-nickel/business/#gsc.tab=0>

<sup>3</sup> See the Video as posted in the Facebook Page of Sangguniang Bayan Member Ton Abengonza; accessible through <https://fb.watch/KQBl4i5NXB/?mibextid=NnVzG8>



22. Incidentally, several groups have taken advantage of the fact that INC has yet to secure the renewal of its mayor's permit, and have capitalized on this fact to conduct rallies against Petitioner's operations. Upon the application of Private Respondent Job Z. Lagrada, Public Respondent Mayor Benedito issued the assailed Memorandum Order 2023-054, allowing the "public assembly/rally from Maasin Crossing (provincial road going to New Panay) down to the approach of Tagdidili Bridge, Purok 5, Bgy. Maasin, this municipality from 6:00 A.M. of February 18, 2023 (Saturday) until 10:00 A.M. of February 21, 2023."

23. Private Respondent applied for an extension, which was granted by the Public Respondent in the assailed Memorandum Order dated 2023-056, extending "the validity of your permit to conduct public assembly/rally" up to 28 February 2023. Subsequently, another extension was granted, extending the validity of the permit up to 7 March 2023, then up to 14 March 2023, 21 March 2023, 28 March 2023, and subsequently, up to 4 April 2023.

24. Given the pronouncements of the Respondent Mayor against Petitioner INC, the threat remains that he will continue extending the permit and/or grant similar permits in the future. As will be explained below, however, continuing this "public assembly/rally" is pure harassment, and is nothing short of grave abuse of discretion, amounting to lack or excess of jurisdiction.

#### **GROUND S TO GRANT THE PETITION**

##### **I.**

**THE ISSUANCE OF A WRIT OF MANDAMUS IS PROPER, AS PUBLIC RESPONDENT UNLAWFULLY EXCLUDES PETITIONER INC FROM THE ENJOYMENT OF ITS RIGHTS, TO WHICH IT IS ENTITLED. PUBLIC RESPONDENT SHOULD BE COMPELLED TO: (A) ISSUE THE MAYOR'S PERMIT IN FAVOR OF PETITIONER; AND (B) PAY DAMAGES TO PETITIONER, IN ACCORDANCE WITH RULE 65, SECTION 3 OF THE RULES OF COURT, IN CONNECTION WITH ARTICLE 32(6) OF THE NEW CIVIL CODE.**



**II.**

**MEMORANDUM ORDER NOS. 2023-006 AND 2023-087, ORDERING PETITIONER TO "STOP ALL (ITS) OPERATIONS" WAS RENDERED WITH GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION.**

A. THE SAME IS CONTRARY TO THE PROVISION MANDATING "CONTINUING VALIDITY" OF MAYOR'S PERMIT UNTIL 20 JANUARY OF THE FOLLOWING YEAR. MOREOVER, IT IS DISCRIMINATORY, AS INC IS NOT AWARE OF ANY OTHER BUSINESS ENTITY SIMILARLY ORDERED TO "STOP OPERATIONS" PENDING RENEWAL OF THEIR MAYOR'S PERMIT.

B. INC HAS TIMELY SUBMITTED THE REQUIREMENTS FOR THE RENEWAL OF ITS MAYOR'S PERMIT. PUBLIC RESPONDENT, HOWEVER, INSISTS ON SEVERAL OTHER "FORMAL AND LEGAL" REQUIREMENTS, WHICH HAVE NO BASIS IN LAW.

C. IN ANY EVENT, THE OFFICE OF THE OMBUDSMAN HAS PREVIOUSLY RULED THAT IN THE CASE OF INC, FAILURE TO RENEW MAYOR'S PERMIT SHOULD NOT BE TAKEN AS A GROUND TO CLOSE ITS OPERATIONS, AS IT IS CLEARLY IN "ADVERSE TERRITORY."

**III.**

**MEMORANDUM ORDER NOS. 2023-054, 2023-056, 2023-065, 2023-072, 2023-080 2023-089, AND 2023-095 ALLOWING THE "PUBLIC ASSEMBLY/RALLY" AGAINST PETITIONER INC, WERE RENDERED WITH GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION.**

A. THE SAME WERE BASED ON THE FACT THAT INC HAS PURPORTEDLY NOT SECURED THE RENEWAL OF ITS MAYOR'S PERMIT, WHICH, AS SHOWN ABOVE, WAS LIKEWISE TAINTED WITH GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION.



B. THE RALLY IS BEING CONDUCTED WITHIN THE PREMISES OF PETITIONER INC., AND NOT IN A PUBLIC PLACE, AS ALLOWED UNDER B.P. 880.

C. THE RALLY CAUSED SERIOUS INTERFERENCE WITH COMMERCE AND TRADE. THE PERSONS AT THE RALLY OBSTRUCTED NOT ONLY THE VEHICLES OF INC, BUT THE VEHICLES OF ITS CONTRACTORS, AS WELL.

**GROUND TO GRANT THE TRO AND/OR WRIT OF  
PRELIMINARY INJUNCTION**

**IV.**

PETITIONER INC HAS THE RIGHT TO CONDUCT BUSINESS, PURSUANT TO ITS MPSA, AND THE RIGHT TO ENJOY ITS PROPERTY WITHOUT UNWARRANTED INTRUSION FROM THE RALLY AND WITHOUT CONSTANT, BASELESS THREATS OF BEING SHUT DOWN BY THE LOCAL GOVERNMENT.

**V.**

THE THREATS TO CLOSE DOWN PETITIONER INC, AS WELL AS THE RALLY, TAINTED WITH VIOLATIONS, ARE MATERIAL AND SUBSTANTIAL VIOLATIONS OF PETITIONER'S RIGHTS.

**VI.**

INJUNCTION IS NECESSARY TO PREVENT IRREPARABLE INJURY TO PETITIONER INC.

**ARGUMENTS AND DISCUSSION**

**I.**

THE ISSUANCE OF A WRIT OF MANDAMUS IS PROPER, AS PUBLIC RESPONDENT UNLAWFULLY EXCLUDES PETITIONER INC FROM THE ENJOYMENT OF ITS RIGHTS, TO WHICH IT IS ENTITLED. PUBLIC RESPONDENT SHOULD BE COMPELLED TO: (A) ISSUE THE MAYOR'S PERMIT IN FAVOR OF



PETITIONER; AND (B) PAY DAMAGES TO PETITIONER, IN ACCORDANCE WITH RULE 65, SECTION 3 OF THE RULES OF COURT, IN CONNECTION WITH ARTICLE 32(6) OF THE NEW CIVIL CODE.

25. *Symaco v. Aquino*<sup>4</sup> discusses when a writ of mandamus is issued, and differentiates between a mandatory and discretionary act:

Under this provision of the Rules of Court, to be entitled to a writ of mandamus, petitioner must show (1) that a tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes petitioner from the use and enjoyment of a right or office to which he is entitled, and (2) that there is no other plain, speedy, and adequate remedy in the ordinary course of law.

A purely ministerial act or duty, in contradistinction to a discretionary act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment. (*Lamb vs. Phipps*, 22 Phil., 456.)

26. In the instant case, mandamus lies in favor of Petitioner INC, as it was unlawfully excluded by Public Respondent from enjoyment of its right to do business and its right under its MPSA. Petitioner INC has complied with all the requirements for the issuance of the mayor's permit. Thus, this duty, under prevailing jurisprudence, has now ceased to become discretionary and has become mandatory. Yet, Public Respondent arbitrarily refuses to

<sup>4</sup> G.R. No. L-14535, 30 January 1960.



issue such mayor's permit, by imposing unreasonable requirements, and as such, should be compelled by this extraordinary writ. Additionally, for depriving Petitioner INC of its property rights without due process of law, Public Respondent should be made to pay damages to the former.

27. As abovementioned, Petitioner INC has been doing business for years in Brooke's Point, Palawan, and has been granted mayor's permit in the previous years. As mentioned above, too, Petitioner INC enjoys rights under its MPSA, pursuant to Republic Act No. 7942, Section 26, to wit:

a. Mineral production sharing agreement is an agreement where the Government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. The contractor shall provide the financing, technology, management and personnel necessary for the implementation of this agreement. (*Underscoring and emphasis supplied.*)

28. Unfortunately, Petitioner INC was unlawfully excluded from enjoying said rights. Public Respondent issued the assailed Memorandum Orders, directing Petitioner INC to stop operations, without cause, and without affording the latter due process. As narrated above, this Memorandum Order for Petitioner INC to cease operations came during the time when it had a mayor's permit with "continuing validity," and within the time provided for application for renewal of its mayor's permit. It is truly baffling how Public Respondent finds reason for such abrupt and capricious order to close Petitioner INC.

29. To emphasize, Petitioner INC has complied with, and submitted the requirements for the renewal of its mayor's permit. As can be gleaned from the official website of the local government of Brooke's Point (<http://brookespointpalawan.gov.ph/wp-content/uploads/2018/07/mayors-permit.pdf>), for purposes of renewal of mayor's permit, only the barangay clearance and the "basis for computing tax, fees and charges" are required.



30. Meanwhile, the 2021 Citizen's Charter of Brooke's Point lists only the barangay clearance as a sole requirement for renewal of mayor's permit:



1. Granting of Mayor's Permit

Service Information: This service is for Business Owners who are applying for a Mayor's Permit.

Office or Division:	Office of the Municipal Mayor/Municipal Administrator		
Classification:	Complex		
Type of Transaction:	Government to Businesses		
Who may avail:	Business Owners		
<b>CHECKLIST OF REQUIREMENTS</b>			
<b>WHERE TO SECURE</b>			
<b>For NEW BUSINESS</b>			
1. Brgy. Clearance	Barangay		
2. DTI/SEC/CDA Registration	DTI/SEC/CDA		
3. BIR Clearance	BIR		
4. Fire Clearance/Fire Safety Inspection Certificate	BFP		
5. Sanitary Inspection/Health Certificate from MHO	MHO		
Note: Other requirements depending on Business Activity			
<b>For RENEWAL</b>			
Brgy. Clearance	Barangay		
AGENCY	FEES TO	PROCESSING	PERSON

31. Petitioner has complied with the above requirements for renewal of mayor's permit. As narrated above, the Barangay Clearance was submitted as an attachment to Petitioner INC's Letter dated 10 January 2023, hereto attached as **Annex T**, submitted to the municipality. As regards the "basis for computing tax, fees, and charges" such information is provided in the application form for renewal, which Petitioner INC likewise submitted as an attachment to the same Letter.

32. With Petitioner INC's submission of the complete requirements, the issuance of the mayor's permit was taken out from the ambit of his discretionary duties. Such task has become ministerial in nature. The aforesaid case of *Symaco v. Aquino*<sup>5</sup> is illustrative:

We agree with the lower court that the moment petitioner complied with the requirements under said ordinance for the issuance of a building permit, the petitioner became entitled to it and the respondent's duty became ministerial and it was, thereupon, incumbent upon him to issue the

<sup>5</sup> G.R. No. L-14535, 30 January 1960.



same. There is nothing in the ordinance which grants respondent the discretion to refuse the issuance of a building permit to an applicant owner, tenant, manager, or contractor. All that the ordinance requires is that said applicant must state the data mentioned therein. Respondent's failure, therefore, to perform an act which the ordinance enjoins him to do, upon compliance with the conditions therein provided, entitled petitioner to the writ of mandamus prayed for. (Hoeys vs. Baldwin, 1 Phil., 551; Lamb vs. Phipps, 22 Phil., 456; Zobel vs. City of Manila, 47 Phil., 169; Compania Gral. de Tabacos vs. French, et al., 39 Phil., 34; Ynchausti & Co. vs. Wright, 47 Phil., 866.) (Emphasis and underscoring supplied.)

33. More apropos, in the case *Newsounds Broadcasting Network Inc. v. Hon. Dy*,<sup>6</sup> the Supreme Court upheld the grant of writ of mandamus, and directed the issuance of a mayor's permit, considering the applicant's compliance with the requirements therefor:

Mandamus lies as the proper relief whenever a public officer unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law. For the year 2004, petitioners had duly complied with the requirements for the issuance of the same mayor's permit they had obtained without issue in years prior. There was no basis for respondents to have withheld the zoning clearances, and consequently the mayor's permit, thereby depriving petitioners of the right to broadcast as certified by the Constitution and their particular legislative franchise. (Emphasis and underscoring supplied.)

34. It should even be pointed out that Petitioner INC even has a mayor's permit to date, as the validity of its 2022 mayor's permit is even automatically extended, by operation of Republic Act No. 11032:

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<sup>6</sup> G.R. No. 170270 and 179411, 2 April 2009.



a. Petitioner INC submitted its application for renewal, with supporting documentary requirements, on 10 January 2023.

b. Pursuant to Section 9(b)(1) of R.A. No. 11032, the local government had 3 or 7 working days from such submission, to act on the application. Thus, it had 19 January 2023, at the latest, to act on INC's application. **In the case of renewal of mayor's permit, processing time therefor, pursuant to the 2021 Citizen's Charter of Brooke's Point, is only forty-five (45) minutes:**

CLIENT STEPS	AGENCY ACTIONS	FEES TO BE PAID	PROCESSING TIME	PERSON RESPONSIBLE
1. Secure necessary requirements and fill-up the application form. Submit for review.	1.1 Issue application form and routing slip. Review the duly accomplished application and its pertinent requirements. Assign a business control number. 1.2 Instruct client to proceed to the Office of the Mun. Treasurer.	Refer to the concerned office or agency	20 Minutes	License Inspector II Administrative Assistant I Office of the Mayor/Municipal Administrator
2. Secure assessment record and official receipt.	2. Issue assessment record and official receipt.	Please refer to Municipal Tax Code	5 Minutes	Collector Office of the Municipal Treasurer
3. Submit all documents from Step 1 & 2 and claim the approved Mayor's Permit	3.1 Prepare Mayor's Permit and indorse to the Office of the Mayor or to authorized	None	20 Minutes	License Inspector II Administrative Assistant I Office of the Mayor/Municipal Administrator

c. The local government failed to do so, and responded only on 20 January 2023 through Respondent's Letter of even date.

d. Thus, owing to such failure to timely act on INC's application, INC's permit is deemed automatically extended, pursuant to Section 10 of R.A. No. 11032, to wit:

**... if a government office or agency fails to act on an application or request for renewal of a license, clearance, permit, certification or authorization subject for renewal within the prescribed processing time, said license, clearance, permit, certification or authorization shall automatically be extended;** (Emphasis and underscoring supplied.)



35. There being no issue that Petitioner INC has duly and timely submitted the requirements for renewal of its mayor's permit, mandamus will lie to compel the issuance of the same.

36. Corollary to the issuance of the writ of mandamus in favor of Petitioner INC, it is likewise entitled to damages, pursuant to Rule 65, Section 3:

**Section 3. *Petition for mandamus.*** — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. (*Emphasis and underscoring supplied.*)

37. Article 32 of the New Civil Code, meanwhile, provides that damages may be awarded, as follows:

ARTICLE 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

Xxx

(6) The right against deprivation of property without due process of law; (*Emphasis and underscoring supplied.*)

38. As narrated above, it is patently clear that Respondent Mayor ordered INC to shut down, thereby depriving it of its property rights, without any opportunity to be heard. For such, Public



Respondent should be held liable and accountable. As explained in *Newsounds Broadcasting Network Inc. v. Hon. Dy*:<sup>7</sup>

We turn to the issue of damages. Petitioners had sought to recover from respondents ₱8 Million in temperate damages, ₱1 Million in exemplary damages, and ₱1 Million in attorney's fees. Given respondents' clear violation of petitioners' constitutional guarantee of free expression, the right to damages from respondents is squarely assured by Article 32 (2) of the Civil Code, which provides:

Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:

x x x x

(2) Freedom of speech;

We noted in *Lim v. Ponce de Leon* that "[p]ublic officials in the past have abused their powers on the pretext of justifiable motives or good faith in the performance of their duties... [and] the object of [Article 32 of the Civil Code] is to put an end to official abuse by plea of the good faith." The application of Article 32 not only serves as a measure of pecuniary recovery to mitigate the injury to constitutional rights, it likewise serves notice to public officers and employees that any violation on their part of any person's guarantees under the Bill of Rights will meet with final reckoning. (Emphasis and underscoring supplied.)

## II.

MEMORANDUM ORDER NOS. 2023-006 AND 2023-087, ORDERING PETITIONER TO "STOP ALL (ITS) OPERATIONS" WAS RENDERED WITH GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

A. THE SAME IS CONTRARY TO THE PROVISION MANDATING "CONTINUING VALIDITY" OF MAYOR'S

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<sup>7</sup> G.R. No. 170270 and 179411, 2 April 2009.



PERMIT UNTIL 20 JANUARY OF THE FOLLOWING YEAR. MOREOVER, IT IS DISCRIMINATORY, AS INC IS NOT AWARE OF ANY OTHER BUSINESS ENTITY SIMILARLY ORDERED TO "STOP OPERATIONS" PENDING RENEWAL OF THEIR MAYOR'S PERMIT.

39. Section 3A.05 of Ordinance No. 2020-34, also known as the Revised Revenue Code of the Municipality of Brooke's Point provides for the continuing validity of the mayor's permit:

Section 3A.05 Administrative Provisions

Xxx

b) Duration of Permit. The Mayor's Permit shall be granted for a period not more than one (1) year and shall expire on the thirty-first (31<sup>st</sup>) of December following the date of issuance unless revoked or surrendered earlier. Every permit shall cease to be in force upon revocation or surrender thereof. **It shall have a continuing validity only upon renewal thereof and payment of the corresponding fee.**

40. As mentioned above, the provision is consistent with the Local Government Code, specifically Section 167 thereof, which allows payment of all local taxes, fees, and charges within the first twenty (20) days of January of the following year.

41. Needless to say, when Petitioner INC was arbitrarily and prematurely ordered to "stop all (its) operations," it still had its 2022 mayor's permit with "continuing validity" and it still had seventeen (17) days to pay its fees and apply for the renewal of its mayor's permit.

42. Inexplicably, the assailed Memorandum Order singled out Petitioner INC, in that to its knowledge, no other business entity was ordered to cease operations, simply because the year 2022 ended, pending renewal of its mayor's permit for 2023. The assailed Memorandum Order was addressed to Petitioner INC alone, and to no other business entity.



43. The arbitrary and premature order of closure issued to Petitioner INC even constitutes corrupt practices of public officers, as defined under Republic Act No. 3019, as it "causes any undue injury to any party in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence." To reiterate, undue injury was caused to Petitioner INC, as it was ordered to shut down, despite its 2022 mayor's permit with "continuing validity" and even before it had full opportunity to renew its mayor's permit for 2023.

44. Worse, the assailed Memorandum Order closed down the operations of Petitioner INC, without any notice or hearing whatsoever, and without prior determination that INC committed a violation of its mayor's permit. This is patently reprehensible, as can be seen from *Hon. Alfredo Lim v. Court of Appeals*<sup>8</sup> -

From the language of the two laws, it is clear that the power of the mayor to issue business licenses and permits necessarily includes the corollary power to suspend, revoke or even refuse to issue the same. However, the **power to suspend or revoke these licenses and permits is expressly premised on the violation of the conditions of these permits and licenses**. The laws specifically refer to the "violation of the condition(s)" on which the licenses and permits were issued. Similarly, the **power to refuse to issue such licenses and permits is premised on non-compliance with the prerequisites for the issuance of such licenses and permits. The mayor must observe due process in exercising these powers, which means that the mayor must give the applicant or licensee notice and opportunity to be heard**.

True, the mayor has the power to inspect and investigate private commercial establishments for any violation of the conditions of their licenses and permits. However, the mayor has no power to order a police raid on these establishments in the guise of inspecting or investigating these commercial establishments. Lim acted beyond his authority when he directed policemen to raid the New Bangkok Club and the Exotic Garden Restaurant. Such act

<sup>8</sup> G.R. No. 111397, 12 August 2022.



of Lim violated Ordinance No. 7716 which expressly prohibits police raids and inspections, to wit:  
xxx

Lim has no authority to close down Bistro's business or any business establishment in Manila without due process of law. Lim cannot take refuge under the Revised Charter of the City of Manila and the Local Government Code. There is no provision in these laws expressly or impliedly granting the mayor authority to close down private commercial establishments without notice and hearing, and even if there is, such provision would be void. The due process clause of the Constitution requires that Lim should have given Bistro an opportunity to rebut the allegations that it violated the conditions of its licenses and permits.

The regulatory powers granted to municipal corporations must always be exercised in accordance with law, with utmost observance of the rights of the people to due process and equal protection of the law. Such power cannot be exercised whimsically, arbitrarily or despotically. In the instant case, we find that Lim's exercise of this power violated Bistro's property rights that are protected under the due process clause of the Constitution.

45. The aforecited case was echoed in DILG Opinion No. 76, Series of 2018, which states:

On the first query, we opine that both substantive and procedural requirements of the law have to be complied with for the issuance of the cease-and-desist order against licensed entity operating within a municipality's territorial authority. This is under the premise that the issuance of the said cease-and-desist order is an enforcement of the regulatory power of a municipal mayor under Republic Act No. 7160 (RA 7160), otherwise known as the Local Government Code of 1991.  
Xxx



In the aforementioned provision, it is clear that Municipal Mayor may suspend or revoke licenses and permits when the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance, had been violated...

Xxx

As to the procedural requirement, basic under the principle of due process are the twin requirements of notice and hearing, i.e., notice to the party being charged of a violation of the laws, ordinances, and rules violated and opportunity to be heard on the part of the said party so he can lay down his defenses and be able to explain his or her side.

46. Notably, too, Public Respondent, in issuing this assailed Memorandum Order, copied the Brooke's Point Municipal Police Station. There can be no other purpose for such action, other than to intimidate Petitioner INC into submission, and for chilling effect for businesses in the whole municipality.

47. Thus, this assailed Memorandum Order should be struck down by this Honorable Court, having been issued with grave abuse of discretion, amounting to lack or excess of jurisdiction, as it is: (a) prematurely rendered, during the time when INC still had a mayor's permit with continuing validity and without affording Petitioner INC the full opportunity to renew its mayor's permit; (b) discriminatory, as no other business entity was ordered to close operations, pending renewal of its mayor's permit; and (c) contrary to the law and established doctrine requiring due process before a business can be ordered closed by the local chief executive.

48. For the same reason, and as it merely "reiterates" the previous Memorandum Order directing the cessation of Petitioner's operations, Memorandum Order No. 2023-087 should be similarly struck down by the Honorable Court.



B. INC HAS TIMELY SUBMITTED THE REQUIREMENTS FOR THE RENEWAL OF ITS MAYOR'S PERMIT. PUBLIC RESPONDENT, HOWEVER, INSISTS ON SEVERAL OTHER "FORMAL AND LEGAL" REQUIREMENTS, WHICH HAVE NO BASIS IN LAW.

49. The assailed Memorandum Order, directing the closure of operations of Petitioner INC, was clearly abusively and capriciously issued. It should not be enforced, and should be struck down soonest, taking into account, too, the subsequent events after the same was issued.

50. After the issuance of the assailed Memorandum Order No. 2023-006 on 3 January 2022, Petitioner INC submitted the requirements for the renewal of its mayor's permit, on 10 January 2023 (even if it had until 20 January 2023 to do so.) This was acknowledged by Public Respondent in his letter dated 20 January 2023.

51. The belated response alone of the Public Respondent warrants the conclusion that Petitioner **INC's mayor's permit for 2022 mayor's permit has already been automatically extended**, by operation of Republic Act No. 11032:

a. Petitioner INC submitted its application on 10 January 2023.

b. Pursuant to Section 9(b)(1) of R.A. No. 11032, the local government had 3 or 7 working days from such submission, to act on the application. Thus, it had 19 January 2023, at the latest, to act on INC's application.

c. The local government failed to do so, and responded only on 20 January 2023 through Respondent's Letter of even date.

d. Thus, owing to such failure to timely act on INC's application, INC's permit is deemed automatically extended, pursuant to Section 10 of R.A. No. 11032, to wit:



**... if a government office or agency fails to act on an application or request for renewal of a license, clearance, permit, certification or authorization subject for renewal within the prescribed processing time, said license, clearance, permit, certification or authorization shall automatically be extended; (Emphasis and underscoring supplied.)**

52. It is also equally evident, from Respondent's Letter dated 20 January 2023, that he is imposing additional hardship on Petitioner INC, by imposing requirements, not similarly imposed to other applicants for renewal of mayor's permit:

a. As can be gleaned from the official website of the local government of Brooke's Point (<http://brookespointpalawan.gov.ph/wp-content/uploads/2018/07/mayors-permit.pdf>), for purposes of renewal of mayor's permit, only the barangay clearance and the "basis for computing tax, fees and charges" are required.

b. However, Respondent Mayor Benedito imposed additional requirements, only specifically from Petitioner INC. He even categorized the same into "formal" and "legal" requirements:

**I. FORMAL REQUIREMENTS:**

Based on initial evaluation of the Form submitted, please FURNISH this Office with the following:

- a. INC's Audited Financial Statements for the applicable period showing the declared ₱980,113,073.52 Gross Sales. If such is not available, other documents allowed by DOF-Bureau of Local Government Finance MC No. 001-2020 dated January 2, 2020, may be submitted;
- b. Secured Occupancy Permit, Barangay Clearance for Renewal from ~~each~~ concerned Barangay, Sanitary Permit/Health Clearance, Municipal Environmental Clearance, and Valid Safety Inspection Certificate (as indicated in Page 2 of your Form Application); and
- c. Itemized and detailed disclosure relating to Page 2 par. 2.11 of the Form, relating to Vans/Trucks other Motor Vehicles used and Storage for Combustible/ Explosive Substance, for purposes of assessment of applicable fees.



**II. LEGAL REQUIREMENTS**

1. **BUSINESS PERMIT FOR BUSINESS OWNER-** For Ipilan Nickel Corporation's business permit renewal to be considered based on an Operating Agreement issued by the MPSA Owner, Celestial Nickel Mining Exploration Corporation ("Celestial"), the actual owner of the MPSA, should apply and be issued a Business Permit as a condition pre-requisite for INC's Business Permit application;
2. **CLARIFICATION-** Global Ferronickel Holdings, Inc. (FNI), publicly announced in [edgar.nic.com.ph](https://www.edgar.nic.com.ph) that "Ipilan Nickel Corporation (INC), an affiliate xxx" successfully completed maiden shipment of ore last September 20, 2022". The disclosure further stated that "Under its Mineral production Sharing Agreement (MPSA), INC is authorized to engage in exploration, development and utilization to engage xxx". Please provide us a copy of INC's MPSA or issue public clarification on the disclosure, if no MPSA has actually been issued to INC;
3. **SEP CLEARANCE-** The Mining Project and MPSA owner is Celestial, please submit an SEP Clearance from PCSD in the name of said MPSA Owner as it is the accountable entity in relation to all commitments made in the MPSA issued;
4. **NCIP Certification Precondition (CP)-** please submit a formal confirmation from NCIP stating that the 2006 Opinion of ADO Director Myrna L. Gaoagas which was internally addressed and never transmitted by NCIP to any government agency or this LGU, is the same position of NCIP as a government agency, that Celestial is not required to secure a Certification Precondition. The NCIP confirmation should be formally transmitted by the concerned NCIP office to the undersigned:  
  
Also submit a report on the status of INC's CP Application;
5. **COMPLIANCE WITH PCSD-IMPOSED REQUIREMENTS -** PAB Admin Cases No. 683 and 742, where cases were filed by PCSD and this LGU against INC, was resolved and also stated in the 2<sup>nd</sup> Paragraph of Page 23 of its Resolution that the mining operations of INC are "subject to the conditions imposed by the Council and the ECAN Zones Map of the Municipality of Brooke's Point, Palawan". Please submit evidence of ECAN Zone Map compliance pursuant to the state Resolution.

53. As INC has duly pointed out in its Letter dated 31 January 2023, it is "only required to submit the barangay clearance from the barangay where its mine site office is located, which is in Barangay Maasin." It also pointed out that "the other permits and clearances that you have mentioned are also integrated in INC's business permit renewal application." As regards Respondent's so-called "legal requirements," Petitioner INC pointed out:

As to the legal requirements, those are not among the requirements for business permit renewal as provided for under Section 8.2.1(a) of JMC No. 01-2021. In case of additional documents, only those enumerated in Annex 4, in relation to Section 8.2.2, of JMC No. 01-2021 are required to



be submitted. In INC's case, it only needs to submit the permits or clearances issued from the Department of Environment and Natural Resources (DENR), which INC has already provided your office in its January 10, 2023 business permit renewal application.

54. To reiterate, such unfair and unjust treatment of making renewal exceptionally hard for Petitioner INC, by imposing baseless requirements, constitutes corrupt practices of public officers, as defined under Republic Act No. 3019, as it "causes any undue injury to any party in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence." The Memorandum Order, directing Petitioner INC's closure, on account of its purported failure to renew its mayor's permit, should clearly not be enforced and should be struck down. Respondent cannot whimsically and arbitrarily close businesses down, by baselessly withholding mayor's permit from them.

C. IN ANY EVENT, THE OFFICE OF THE OMBUDSMAN HAS PREVIOUSLY RULED THAT IN THE CASE OF INC, FAILURE TO RENEW MAYOR'S PERMIT SHOULD NOT BE TAKEN AS A GROUND TO CLOSE ITS OPERATIONS, AS IT IS CLEARLY IN "ADVERSE TERRITORY."

55. It is also worthy to note that the assailed Memorandum Order is similar to the Closure Order dated 22 May 2017 issued by then Mayor Mary Jean Feliciano against Petitioner INC. Such Closure Order dated 22 May 2017 similarly cited Petitioner INC's purported lack of mayor's permit.

56. When such Closure Order, among others, was elevated to the Office of the Ombudsman, the latter issued its Consolidated Decision dated 19 February 2021, hereto attached as **Annex K**, finding then Mayor Feliciano guilty of Oppression or Grave Abuse of Authority, and was suspended for one year from service without pay.



57. As regards the apparent lack of mayor's permit, the Office of the Ombudsman aptly ruled:

In addition, the absence of a Mayor's Permit and other permits issued by the Municipality of Brooke's Point cannot be used against INC especially when Mayor Feliciano had made her intentions clear that she was against INC's mining operations in her locality. Apart from her public sentiments against INC, by instructing Tabangay not to accept the Occupation Fee through the issuance of MO 2017-50, it can reasonably (sic) assumed that INC was in adverse territory and will not be able to secure any local permit from the municipality.

58. The above Consolidated Decision is illuminating, and highlights that the assailed Memorandum Order was rendered with grave abuse of discretion.

### III.

**MEMORANDUM ORDER NOS. 2023-054, 2023-056, 2023-065, 2023-072, 2023-080, 2023-089 AND 2023-095 ALLOWING THE "PUBLIC ASSEMBLY/RALLY" AGAINST PETITIONER INC. WERE RENDERED WITH GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION.**

A. THE SAME WERE BASED ON THE FACT THAT INC HAS PURPORTEDLY NOT SECURED THE RENEWAL OF ITS MAYOR'S PERMIT, WHICH, AS SHOWN ABOVE, WAS LIKEWISE TAINTED WITH GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK OR EXCESS OF JURISDICTION.

59. As abovementioned, the instant Petition likewise assails the Memorandum Orders of Public Respondent, which granted Private Respondent's application to conduct a public assembly / rally against Petitioner INC.

60. A public assembly / rally is indeed taking place, to date, at INC premises.



61. It is abundantly clear that the said public assembly / rally rests on nothing but the Public Respondent Mayor's earlier Memorandum Order directing Petitioner INC to cease operations for purported lack of mayor's permit.

In a press briefing on Friday, Brooke's Point Mayor Cesareo Benedito Jr. lamented how the mining firm ignored his order and continued to operate.

"[In the] first week of January, we sent an order telling them to stop and reminding them that they need to renew their permit," Benedito said. "Until now, they have submitted requirements, but many are still missing for their renewal."

On Feb. 18, residents staged a protest and barricaded the mine purportedly because residents "could not accept that the firm is disregarding the power of our mayor."<sup>9</sup>

62. It was extensively discussed above why the Memorandum Order directing INC's closure, on account of purported lack of mayor's permit, is capricious, whimsical, and oppressive. By similar reasoning, the public assembly / rally which took place as an offshoot of such earlier Memorandum Order, is likewise unlawful, and the Memorandum Orders allowing and extending such public assembly / rally are similarly capricious, whimsical, and oppressive. It is nothing but the Public Respondent's ploy to put additional pressure on Petitioner INC to shut down, despite clear lack of reason to do so.

B. THE RALLY IS BEING CONDUCTED WITHIN THE PREMISES OF PETITIONER INC., AND NOT IN A PUBLIC PLACE, AS ALLOWED UNDER B.P. 880.

63. To be sure, public assemblies / rallies are allowed under B.P. Blg. 880, but only in public places, which are of public ownership, to wit:

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<sup>9</sup> <https://newsinfo.inquirer.net/1735490/expired-permit-puts-palawan-mine-in-trouble#ixzz7uURnAP1q>



(a) "Public assembly" means any rally, demonstration, march, parade, procession or any other form of mass or concerted action held in a public place for the purpose of presenting a lawful cause; or expressing an opinion to the general public on any particular issue; or protesting or influencing any state of affairs whether political, economic or social; or petitioning the government for redress of grievances.

The processions, rallies, parades, demonstrations, public meetings and assemblages for religious purposes shall be governed by local ordinances: Provided, however, That the declaration of policy as provided in Section 2 of this Act shall be faithfully observed.

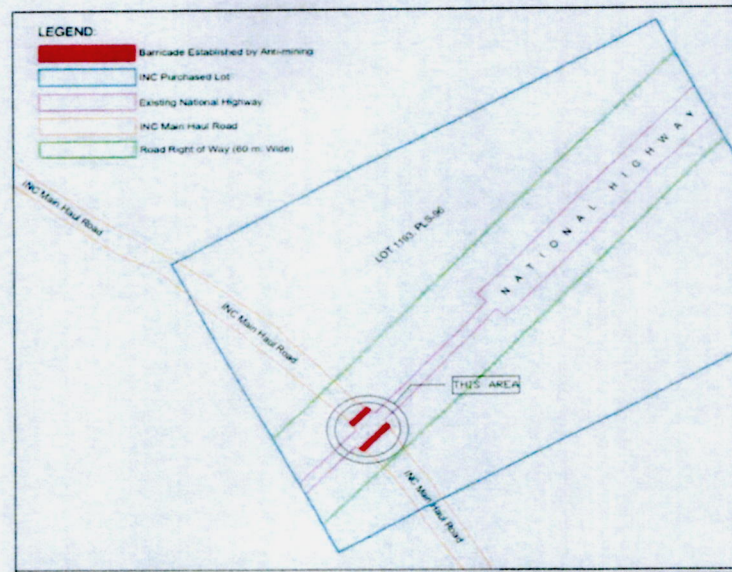
The definition herein contained shall not include picketing and other concerted action in strike areas by workers and employees resulting from a labor dispute as defined by the Labor Code, its implementing rules and regulations, and by the Batas Pambansa Bilang 227.

(b) "Public place" shall include any highway, boulevard, avenue, road, street, bridge or other thoroughfare, park, plaza, square, and/or any open space of public ownership where the people are allowed access. (*Emphasis and underscoring supplied.*)

64. Regrettably, the assailed Memorandum Orders allowed and extended the ongoing public assembly / rally in a private property, owned by Petitioner INC.

65. As can be seen from the Location Map of Barricade Established by Anti-Mining, hereto attached as **Annex L**, prepared by Geodetic Engr. Richard Natad, the barricade area (marked "This Area" and highlighted red) is within Lot No. 1193 (within the blue rectangle) purchased by Petitioner INC:





66. Lot 1193 is covered by Transfer Certificate of Title No. T-7007, hereto attached as **Annex M**, which, in turn, was purchased by Petitioner INC, through the Deed of Absolute Sale, hereto attached as **Annex N**, dated 8 November 2016.

67. Thus, for allowing a public assembly / rally within a private property, and not in a public place, of public ownership, the assailed Memorandum Orders should be declared void and should be struck down. Further, Public Respondent should be prohibited from further extending the said public assembly / rally, or from granting similar permits in the future.

C. THE RALLY CAUSED SERIOUS INTERFERENCE WITH COMMERCE AND TRADE. THE PERSONS AT THE RALLY OBSTRUCTED NOT ONLY THE VEHICLES OF INC, BUT THE VEHICLES OF ITS CONTRACTORS, AS WELL.

68. It should be stressed that while B.P. Blg. 880 allows public assemblies, the same should not result to "undue interference with the free flow of commerce and trade." The demonstrators should,



likewise, refrain from "unduly interfering with the rights of other persons not participating in the public assembly."

69. As can be seen from the Report of the Mine Security Department dated 21 February 2023, hereto attached as **Annex R**, the protesters not only "interfered" with rights of non-participants, but even criminally threatened and harassed them:

22. At around 2000H, personnel from Bohrer Mining Consulting Services ("Bohrer"), INC's drilling contractor, while on their way back to their camp in Sitio Panay, Brgy. Maasin after procuring drilling supplies in Narra, Palawan, were accosted by a certain Mr. Rudy Cataluna while some MENRO personnel surrounded their vehicle. The culprits proceeded to threaten them and intimidate the Bohrer personnel, cautioning them to take care of themselves while in their temporary residence. To further intimidate, the personnel, one of the culprits even brandished an icepick.

23. At midnight following the incident, the Bohrer personnel noticed unusual noises outside the fences of their temporary residence/office. Initially, they disregarded it, but their utility boy heard sounds of people attempting to force open their gate. Upon opening the lights, the noises stopped and no one was seen at the gate. The personnel suspect that the incident they experienced later that night was connected to the earlier incident, given the proximity in time and the similarities in the modus operandi of the two events. The personnel have good reason to believe that they are related.

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25. Around 655H of February 20, 2023, while the Bohrer personnel were en route to deliver core samples to the INC core house, they were chased and subsequently intercepted by a group of protesters who were armed with paddles (Pamalo) and icepicks. Mr. Rudy Cataluna forcibly demanded that the personnel get out of the vehicle and provide their names and details on a logbook. The Bohrer personnel were left with no choice but to comply with Mr. Rudy Cataluna's demands, highlighting the potential risks



and safety hazards faced by personnel due to the above-mentioned rally.

70. The Memorandum dated 22 February 2023, hereto attached as **Annex O**, prepared by the Brooke's Point Municipal Police Station is quite telling, and shows that violations were committed at the public assembly / rally.

4. However, at around 9:30 AM of February 18, 2023, demonstrators were spotted by the personnel of Ipilan Nickel Corp. carrying bamboo poles towards INC premises and were able to set up barricades at the INC Haul Road 2 shutting off and obstructing the passage of trucks, and equipment from the mine pit to the causeway prompting the INC thru their counsel to inform the Municipal Mayor regarding the violations committed by the demonstrators. *See attached Letter*

5. Furthermore, on February 20, 2023, the protesters prevented the driver of a mini truck owned by the Ipilan Nickel Corporation to transport samplings into their facility but immediately pacified by personal of this Station in a peaceful manner thru dialogue. *See attached photograph*

6. The undersigned conducted verification to determine the alleged violations of the demonstrators being mentioned in the Letter of the Ipilan Nickel Corporation to the Local Chief Executive and shown disregard for the law and the safety and well-being of the public which is prima facie that they violated the permit conditions under BP 880 and affected the free flow of commerce and trade of the said firm. *See attached photographs*

7. After the said mining firm informed the Local Chief Executive regarding the violations committed by the demonstrators and requested to exercise discretion to lift the permit granted to the participants of the rally as stated in the DILG Memorandum Circular No. 2019-035, the latter disapproved their request.



8. The undersigned informed the Local Chief Executive thru dialogue on February 21, 2023 on or about 8:59 AM regarding the alleged violations. That on February 21, 2023, on or about 10:00 AM, the undersigned received Memorandum from the Local Chief Executive approving the extension of Permit to Conduct Public Assembly / Rally until February 28, 2023 and further ordering this Station to strictly enforce the provisions of Batas Pambansa Blg. 880.  
*See attached Memorandum*

71. Worse, as seen from above, Respondent Mayor turned a blind eye to these violations, and capriciously extended the unlawful assembly / rally, twice. He did not even examine the applicant nor did he confirm the veracity of the alleged violations brought to his attention by the Police Station. Thus, unless prohibited and restrained by this Honorable Court, Respondent Mayor will surely issue further extensions and / or similar permits, in total disregard of the rights of other persons, and in total disregard of violations committed during such public assemblies.

**IV.**

**PETITIONER INC HAS THE RIGHT TO CONDUCT BUSINESS, PURSUANT TO ITS MPSA, AND THE RIGHT TO ENJOY ITS PROPERTY WITHOUT UNWARRANTED INTRUSION FROM THE RALLY AND WITHOUT CONSTANT, BASELESS THREATS OF BEING SHUT DOWN BY THE LOCAL GOVERNMENT.**

**V.**

**THE THREATS TO CLOSE DOWN PETITIONER INC, AS WELL AS THE RALLY, TAINTED WITH VIOLATIONS, ARE MATERIAL AND SUBSTANTIAL VIOLATIONS OF PETITIONER'S RIGHTS.**

**VI.**

**INJUNCTION IS NECESSARY TO PREVENT IRREPARABLE INJURY TO PETITIONER INC.**

72. Petitioner INC repleads the foregoing allegations in support of its prayer for a temporary restraining order and/or injunctive relief. The requisites of injunction are as follows:



A writ of preliminary injunction and a TRO are injunctive reliefs and preservative remedies for the protection of substantive rights and interests. An application for the issuance of a writ of preliminary injunction and/or TRO may be granted upon the filing of a verified application showing facts entitling the applicant to the relief demanded.

Essential to granting the injunctive relief is the existence of an urgent necessity for the writ in order to prevent serious damage. A TRO issues only if the matter is of such extreme urgency that grave injustice and irreparable injury would arise unless it is issued immediately. Under Section 5, Rule 58 of the Rule of Court, a TRO may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would be inflicted on the applicant before the writ of preliminary injunction could be heard.

Thus, to be entitled to the injunctive writ, petitioners must show that (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.

73. The Petitioner has a clear and unmistakable right entitled to protection. No less than the Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. It is a fundamental principle that no property shall be taken away from an individual without due process, whether substantive or procedural. The dispossession of property, or in this case the Memorandum Order directing Petitioner INC to shut down its operations is no less than deprivation of property without due process of law.

74. The order directing Petitioner INC to shut down is obviously tainted with grave abuse of discretion - it was issued when a mayor's permit still had "continuing validity," and despite the fact that Petitioner had already submitted, in a timely manner, the requirements for renewal. The Memorandum Order is clearly



discriminatory, as it ordered Petitioner INC only, and no other, to shut down pending renewal of mayor's permit. Further, Respondent imposed additional requirements for renewal, which were not similarly imposed for other applicants.

75. Sanctioned under Sec. 2, Article XII of the Philippine Constitution,<sup>10</sup> MPSA No. 017-93-IV operated by INC was entered into by the Republic of the Philippines through its authorized representative, the Secretary of Department of Natural Resources. In executing the MPSA, the Republic of the Philippines, as owner of all lands of public domain and natural resources, sought the financial resources, technical competence of its contractor and appointed the same to assist the Government in the development and utilization for commercial purposes of certain nickel ore and other mineral deposits found the designated Contract Area.

76. It is also worth noting that having the pertinent Mineral Production Sharing Agreement, or MPSA, Petitioner INC enjoys rights under Republic Act No. 7942, Section 26, to wit:

a. Mineral production sharing agreement is an agreement where the Government grants to the contractor the exclusive right to conduct mining operations within a contract area and shares in the gross output. The contractor shall provide the financing, technology, management and personnel necessary for the implementation of this agreement. (*Underscoring and emphasis supplied.*)

77. Acknowledging the contractor's exclusive right to conduct mining operations within its contract area, Section 106<sup>11</sup> of Republic

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<sup>10</sup> SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, xxx and other natural resources are owned by the State. xxx The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty centum of whose capital is owned by such citizens. xxx

<sup>11</sup> Section 106. Willful Damage to a Mine. Any person who willfully damages a mine, unlawfully causes water to run into a mine, or obstructs any shaft or passage to a mine, or renders useless, damages or destroys any machine, appliance, apparatus, rope, chain, tackle, or any other things used in a mine, shall



Act No. 7942 imposes the penalties of a fine and imprisonment against any person who shall unlawfully and willfully obstruct any shaft or passage to a mine or render things used in a mine useless. In the same vein, Section 107<sup>12</sup> of Republic Act No. 7942 similarly imposes the penalties of a fine and imprisonment against any person who shall prevent or obstruct the permit holder from undertaking mining operations without any justifiable cause.

78. Such right, stemming from an agreement in which the Government itself is a party, cannot be arbitrarily taken away by the Local Chief Executive, more so, without due process. In ruling that local chief executives cannot overturn Constitutional and statutory mandates of the Philippine Mining Act, a much recent national legislation from the Local Government Code, the Sandiganbayan in *People v. Marty*<sup>13</sup> stressed that:

“[Local chief executives are] expected to have a full grasp of the extent and the limitations of his powers as municipal mayor. xxx There are still proper procedures set by the Local Government Code which [he] ought to have faithfully observed. It must be emphasized that the exercise of official functions of local officials is subject to limitations. This is due to the fact that any form of autonomy granted to local governments will necessarily be limited and confined within the extent allowed by the central authority.”

79. While municipalities are vested with the power to govern and manage its affairs, such authority shall in no way be construed to include the power to curtail activities specifically sanctioned by the national government:

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be punished, upon conviction, by the appropriate court, by imprisonment not exceeding a period of five (5) years and shall, in addition, pay compensation for the damages caused thereby.

<sup>12</sup> Section 107. Illegal Obstruction to Permittees or Contractors. Any person who, without justifiable cause, prevents or obstructs the holder of any permit, agreement or lease from undertaking his mining operations shall be punished, upon conviction by the appropriate court, by a fine not exceeding Five thousand pesos (P5,000.00) or imprisonment not exceeding one (1) year, or both, at the discretion of the court.

<sup>13</sup> Criminal Case No. SB-17-CRM-0050-0052, February 15, 2019.



"xxx where the legislature has made provision for the regulation of conduct, it has manifested its intention that the subject matter shall be fully covered by the statute, and that a municipality, under its general powers, cannot regulate the same conduct.

xxx

Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life., without which they cannot exist. As it creates, so it may destroy.

xxx

xxx By and large, xxx, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.

xxx"<sup>14</sup>

80. Verily, the Supreme Court has emphasized this elementary principle of constitutional law in *League of Provinces v. DENR*<sup>15</sup>, where it ruled:

"Paragraph 1 of Section 2, Article XII (National Economy and Patrimony) of the Constitution provides that "[t]he exploration, development and utilization of natural resources shall be under the full control and supervision of the State.

xxx

It should be pointed out that the Administrative Code of 1987 provides that the DENR is, subject to law and higher authority, in charge of carrying out the State's constitutional mandate, under Section 2, Article XII of the Constitution, to control and supervise the exploration, development, utilization and

<sup>14</sup> Batangas CATV, Inc. v. Court of Appeals, G.R. No. 138810, September 29, 2004.

<sup>15</sup> League of Provinces of the Philippines v. Department of Environment and Natural Resources and Hon. Angelo T. Reyes, G.R. No. 175368, 11 April 2013.



conservation of the country's natural resources. Hence, the enforcement of small-scale mining law in the provinces is made subject to the supervision, control and review of the DENR under the Local Government Code of 1991, while the People's Small-Scale Mining Act of 1991 provides that the People's Small-Scale Mining Program is to be implemented by the DENR Secretary in coordination with other concerned local government agencies.

Indeed, Section 4, Article X (Local Government) of the Constitution states that "[t]he President of the Philippines shall exercise general supervision over local governments," and Section 25 of the Local Government Code reiterates the same. General supervision by the President means no more than seeing to it that laws are faithfully executed or that subordinate officers act within the law.

The Court has clarified that the constitutional guarantee of local autonomy in the Constitution [Art. X, Sec. 2] refers to the administrative autonomy of local government units or, cast in more technical language, the decentralization of government authority. It does not make local governments sovereign within the State. Administrative autonomy may involve devolution of powers, but subject to limitations like following national policies or standards, and those provided by the Local Government Code, as the structuring of local governments and the allocation of powers, responsibilities, and resources among the different local government units and local officials have been placed by the Constitution in the hands of Congress under Section 3, Article X of the Constitution." (*emphasis and underscoring supplied*)

81. Likewise, in *Hon. Lina v. Hon. Francisco Dizon Pano*,<sup>16</sup> the Supreme Court explained that a local ordinance cannot supersede a national statute, and that a local official is correspondingly devoid of power to enforce such void local ordinance. The Court ruled:

<sup>16</sup> *Hon. Hose D. Lina, Jr., Sangguniang Panlalawigan of Laguna, and Hon. Calixto Cataquiz v. Hon. Francisco Dizon Pano and Tony Calvento*, G.R. No. 129093, 30 August 2001.



"The entire controversy stemmed from the refusal of Mayor Cataquiz to issue a mayor's permit for the operation of a lotto outlet in favor of private respondent. According to the mayor, he based his decision on an existing ordinance prohibiting the operation of lotto in the province of Laguna.

xxx

The game of lotto is a game of chance duly authorized by the national government through an Act of Congress. Republic Act 1169, as amended by Batas Pambansa Blg. 42, is the law which grants a franchise to the PCSO and allows it to operate the lotteries. The pertinent provision reads:

xxx

This statute remains valid today. While lotto is clearly a game of chance, the national government deems it wise and proper to permit it. Hence, the Sangguniang Panlalawigan of Laguna, a local government unit, cannot issue a resolution or an ordinance that would seek to prohibit permits. Stated otherwise, what the national legislature expressly allows by law, such as lotto, a provincial board may not disallow by ordinance or resolution.

In our system of government, the power of local government units to legislate and enact ordinances and resolutions is merely a delegated power coming from Congress. As held in *Tatel vs. Virac*, ordinances should not contravene an existing statute enacted by Congress. The reasons for this is obvious, as elucidated in *Magtajas v. Pryce Properties Corp.*

Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred upon them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest



that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.

xxx

Ours is still a unitary form of government, not a federal state. Being so, any form of autonomy granted to local governments will necessarily be limited and confined within the extent allowed by the central authority. Besides, the principle of local autonomy under the 1987 Constitution simply means "decentralization". It does not make local governments sovereign within the state or an "imperium in imperio". xxx  
(emphasis and underscoring supplied)

82. In delaying the issuance of mayor's permit, requiring the submission of excessive requirements, ordering INC to stop operating despite dutifully applying and submitting requirements for the renewal of its mayor's permit, and abetting the illegal activities of individuals preventing INC from conducting regular mining operations, Respondent Mayor Benedito went beyond his delegated powers to coordinate and facilitate the implementation of mining projects, subject to the powers specifically vested in DENR.<sup>17</sup>

83. As has been clearly elucidated by the foregoing cases, Respondent Mayor Benedito cannot legally circumvent and indirectly nullify the subsisting MPSA between the Republic of the Philippines and INC - through the simple expedience of refusing to issue the mayor's permit of INC. The foregoing actuations of Respondent Mayor Benedito constitute a clear and reprehensible attempt to undermine the Constitutional hierarchy established through our unitary form of government.

84. It cannot be disputed that, as shown above, Petitioner faces an impending closure of its business through actions clearly tainted with invalidity. Thus, the Petitioner has a clear and unmistakable right, a right *in esse* to be protected by the injunction.

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<sup>17</sup> Sec. 8, DENR Administrative Order No. 2010-21, June 28, 2010.



85. Additionally, while B.P. Blg. 880 recognizes the right to public assembly / rally, such right must be exercised on public property of public ownership, must not disrupt free flow of trade and commerce, and must not interfere with the rights of persons who are not participating in such assembly / rally. In the instant case, there is material and substantial violation of Petitioner INC's rights as Respondent Mayor permitted and extended the rally on its private property. Respondent Mayor, further, whimsically disregarded violations brought to his attention by the Police Station.

86. To avoid further imminent acts of deprivation and disturbance of its right, the Petitioner is entitled to an interim injunctive relief. The commission or continuance of the act or acts complained of during the pendency of the present case would work injustice and cause irreparable damage to the Petitioner.

87. Unless restrained, Public Respondent is threatening, or attempting to do, or suffering to be done, some act or acts in violation of the ownership rights of the Petitioner respecting the subject of the action or proceeding, and tending to render any judgment herein ineffectual.

88. Petitioner INC is ready, willing and able to post a bond in such amount as this Honorable Court may require, conditioned upon the payment of any damage that Respondents may suffer if it is finally found that it is not entitled to the temporary restraining order and/or writ of preliminary injunction prayed for herein. The present Petition is verified, and also serves as the Affidavit required for injunctive relief, pursuant to the Supreme Court's ruling in *Nasser v. Court of Appeals*.<sup>18</sup>

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<sup>18</sup> In *Nasser v. Court of Appeals* (G.R. No. 32945, December 3, 1990), this Honorable Court held that - "the verified statement the Petitioner incorporated in the complaint without a separate affidavit is sufficient and valid to obtain the attachment (*Tolentino v. Carla, et al.*, 66 Phil. 140-143). Thus, under the same ruling, the verified complaint in the case at bar entitled Application for a Writ of Preliminary Attachment which specifically stated that to avoid redundancy and repetition, the affidavit of the plaintiffs as required under Section 3, Rule 57 of the Revised Rules of Court is dispensed with, as the matters to be treated and contained therein are already the Petitioner incorporated and made part of the complaint, duly verified by them, has undoubtedly substantially complied with the requirements of the Rules and the court to which the application for the attachment was filed has jurisdiction to issue the writ prayed for."



**WITNESSES AND SUMMARY OF INTENDED TESTIMONIES**

89. Petitioner INC intends to present the following witnesses, with the respective summary of their intended testimonies:

Mr. Rolly Celino, whose Judicial Affidavit is hereto attached as <b>Annex P</b> , or any other employee of INC	<p>To testify on and identify the assailed Memorandum Orders, and pertinent communications and correspondence of Petitioner INC</p> <p>To identify relevant photographs and reports</p> <p>To testify on the pertinent allegations above, including but not limited to the obstruction of INC vehicles, and the occupation of INC private property by the rallyists</p>
Engr. Richard Natad, whose Judicial Affidavit is hereto attached as <b>Annex Q</b>	<p>To testify on the exact location of the rally / public assembly, and show that it is inside private property of Petitioner INC</p> <p>To identify the report he made, and other relevant documents</p>
SG Pablito Refuerzo, whose Judicial Affidavit is hereto attached as <b>Annex U</b>	To testify on the events during the public assembly / rally, and to identify the security logbook entries pertinent thereto
Police Major Raffy Esperida, or any other employee of the	To identify and testify on the Memorandum dated 22



Brookes' Point Police Station, whose Judicial Affidavit will be submitted subsequently	February 2022 ( <i>sic</i> - should be 22 February 2023)
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90. Petitioner INC reserves the right to present additional witnesses, as may be warranted in the course of the trial.

#### **DOCUMENTARY AND OBJECT EVIDENCE**

91. Petitioner INC intends to present the Annexes attached hereto as its documentary and object evidence, and likewise reserves its right to present additional documentary and object evidence, as may be warranted in the course of the trial.

#### **RELIEF**

WHEREFORE, premises considered, it is respectfully prayed that this Honorable Court:

1. immediately SET a summary hearing for the issuance of a Temporary Restraining Order (TRO), pursuant to Rule 58, Section 4 (d), and thereafter, ISSUE such TRO;

2. after hearing for the purpose, ISSUE the writ of preliminary injunction, enjoining Public Respondent Mayor Benedito, his agents, counsel, staff, representatives, assigns, or successors-in-interests, and all other persons claiming authority from him or acting on his behalf, restraining/enjoining them from: (a) IMPLEMENTING / ENFORCING the Memorandum Orders directing the closure and/or cessation of operation of Petitioner INC; and (b) ISSUING / GRANTING further extensions, or new permits to public assembly / rally, violative of the law and of Petitioner's rights, as the subject Memorandum Orders;

3. after giving due course to the instant Petition, issue the corresponding writs: (a) DIRECTING Public Respondent to ISSUE mayor's permit to Petitioner INC for the year 2023; (b) DECLARING



the assailed Memorandum Orders null and void, for having been issued with grave abuse of discretion, amounting to lack or excess of jurisdiction; and (c) PERPETUALLY PROHIBITING Public Respondent, his agents, counsel, staff, representatives, assigns, or successors-in-interests, and all other persons claiming authority from him or acting on his behalf, from performing the acts mentioned in the previous paragraph; and (d) ORDERING Public Respondent to PAY damages in favor of Petitioner INC in the amount of P5,000,000.00 as a consequence of his baseless and unlawful deprivation of property without due process of law.

Petitioner INC prays for other just and equitable reliefs.

Makati City for Brooke's Point, Palawan, 31 March 2023.

**SIGUION REYNA MONTECILLO  
& ONGSIAKO**

*Counsel for Petitioner*

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By:



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IBP No. 181336; 4 January 2023; Quezon City  
Roll No. 41096, 15 April 1996  
MCLE Exemption No. VII-Acad003026; 10.05.21



**CHRISTOPHER P. CAPUL**

PTR No. 9568155; 4 January 2023; Makati City  
IBP No. 181351; 4 January 2023; Manila I  
Roll No. 59801; 19 April 2011  
MCLE Compliance VII No. 0005864; 12.14.21



  
**JOHN IRVIN M. VELASQUEZ**

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IBP No. 181363; 4 January 2023; Quezon City  
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Roll No. 71237, June 6, 2018  
MCLE Compliance No. VII 00055986; November, 2021  
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