

EN BANC

G.R. No. 189185 – WILFREDO MOSQUEDA, ET AL., Petitioners v. PILIPINO BANANA GROWERS & EXPORTERS ASSOCIATION, INC., ET AL., Respondents.

G.R. No. 189305 – CITY GOVERNMENT OF DAVAO, Petitioner v. COURT OF APPEALS, ET AL., Respondents.

Promulgated:

August 16, 2016

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[Signature]-----x

CONCURRING OPINION

LEONEN, J.:

I concur in the result. Ordinance No. 0309-07, Series of 2007 passed by Davao City is too broad in that it prohibits aerial spraying in agriculture regardless of the substance and the method of aerial spraying involved. This Court's Decision should be read in this narrow sense.

I add the following points to clarify the reasons for my vote.

First, nothing in the disposition of this case should be construed as an absolute prohibition for the banning of aerial spraying of certain chemicals. Even if the *Sangguniang Panlungsod* properly appreciated the harm caused by the spraying of chemicals that addressed the problem of the Black Sigatoka, the resulting local legislation was too broad. Justification for one case does not necessarily always provide justification for another case.

Second, it is clear that passing a sufficiently narrow ordinance banning aerial spraying of a pesticide may be done by a local government unit. This can be justified by Section 16¹ of the Local Government Code.

¹ LOC. GOV. CODE, sec. 16 provides:

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

The present code and the Constitution² provide sufficient basis for that kind of autonomy.

Localized harm that affect specific residents and that may be unique to a certain municipality or city should not await action from the national government. Local government units are not so inutile as to be unable to sufficiently protect its citizens. Davao City can act. It does not need Malacañang or the Congress to do what it already can.

I differ from the ponencia with respect to its interpretation of Presidential Decree No. 1144³ creating the Fertilizer and Pesticide Authority. In my view, nothing in the Decree's grant of powers⁴ prohibits

² CONST., art. II, sec. 25 provides:

SECTION 25. The State shall ensure the autonomy of local governments.

³ Pres. Decree No. 1144 (1977), Creating the Fertilizer and Pesticide Authority and Abolishing the Fertilizer Industry Authority.

⁴ Pres. Decree No. 1144 (1977), sec. 6 provides:

SECTION 6. Powers and Functions. — The FPA shall have jurisdiction, on over all existing handlers of pesticides, fertilizers and other agricultural chemical inputs. The FPA shall have the following powers and functions:

I. Common to Fertilizers, Pesticides and other Agricultural Chemicals

1. To conduct an information campaign regarding the safe and effective use of these products;
2. To promote and coordinate all fertilizer and pesticides research in cooperation with the Philippine Council for Agriculture and Resources Research and other appropriate agencies to ensure scientific pest control in the public interest, safety in the use and handling of pesticides, higher standards and quality of products and better application methods;
3. To call upon any department, bureau, office, agency or instrumentality of the government, including government-owned or controlled corporations, or any officer or employee thereof and on the private sector, for such information or assistance as it may need in the exercise of its powers and in the performance of its functions and duties;
4. To promulgate rules and regulations for the registration and licensing of handlers of these products, collect fees pertaining thereto, as well as the renewal, suspension, revocation, or cancellation of such registration or licenses and such other rules and regulations as may be necessary to implement this Decree;
5. To establish and impose appropriate penalties on handlers of these products for violations of any rules and regulations established by the FPA;
6. To institute proceedings against any person violating any provisions of this Decree and/or such rules and regulations as may be promulgated to implement the provisions of this Decree after due notice and hearing;
7. To delegate such selected privileges, powers or authority as may be allowed by law to corporation, cooperatives, associations or individuals as may presently exist or be organized to assist the FPA in carrying out its functions, and;
8. To do any and all acts not contrary to law or existing decrees and regulations as may be necessary to carry out the functions of the FPA.

II. Fertilizers

1. To make a continuous assessment of the fertilizer supply and demand situation, both domestic and worldwide;
2. To establish and enforce sales quotas, production schedules, distributions areas and such other marketing regulations as may be necessary to assure market stability and viable operations in the industry;
3. To determine and set the volume and prices both wholesale and retail; of fertilizer and fertilizer inputs;
4. To establish and implement regulations governing the import and export of fertilizer and fertilizer inputs, and when necessary, to itself import and/or export such items, including the negotiating and contracting of such imports and exports;
5. To import fertilizer and fertilizer inputs exempt from customs duties, compensating and sales taxes and all other taxes, and to purchase naphtha locally free from specific taxes and the corresponding duty on the imported crude, and to sell or convey such fertilizer or

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local government units from regulating the mode of delivery of certain allowed chemicals should there be clear harm caused to the residents of a municipality or city. Certifying that a pesticide can be used is different from preventing the harm it can do when applied in a certain way. Davao City did not intend to prohibit the pesticide, but merely the method of its application.

Third, the precautionary principle embedded both in Article II, Section 16⁵ and Article III, Section 1⁶ of the Constitution applies in this case.

fertilizer input to any individual association, or corporation likewise exempt from the payment of customs duties and all other taxes;

6. To control and regulate all marketing companies, whether importer, indenter, wholesaler or retailer; by controlling and regulating prices, terms, mark-ups, distribution channels, promotion, storage and other marketing factors in the domestic fertilizer market;
7. To regulate and control quality of the different grades of fertilizer and to set new grades when necessary;
8. To control and regulate all aspects of domestic fertilizer production, including the utilization of idle capacity and the orderly expansion of the industry and to compel the utilization of unused or underutilized capacities of fertilizer companies and to direct any improvements, modifications or repairs as may be necessary to accomplish this;
9. To approve or to reject the establishment of new fertilizer or fertilizer input plants and the expansion or contraction of existing capacities;
10. To obtain complete assess to all pertinent information on the operations of the industry, including audited and/or unaudited financial statements, marketing, production, and inventory data;
11. To control and assist in the financing of the importation of fertilizer and fertilizers inputs of production, of inventory and working capital, and of the expansion of the industry;
12. To do all such things as may be necessary to maintain an adequate supply of fertilizers to the domestic market at reasonable prices while maintaining the long-term viability of the industry.

III. Pesticides and Other Agricultural Chemicals

1. To determine specific uses or manners of use for each pesticide or pesticide formulation;
2. To establish and enforce tolerance levels and good agricultural practices for use of pesticides in raw agricultural commodities;
3. To restrict or ban the use of any pesticide or the formulation of certain pesticides in specific areas or during certain periods upon evidence that the pesticide is an imminent hazard, has caused, or is causing widespread serious damage to crops, fish or livestock, or to public health and the environment;
4. To prevent the importation of agricultural commodities containing pesticide residues above the accepted tolerance levels and to regulate the exportation of agricultural products containing pesticide residue above accepted tolerance levels;
5. To inspect the establishment and premises of pesticide handlers to insure that industrial health and safety rules and anti-pollution regulations are followed;
6. To enter and inspect farmers' fields to ensure that only the recommended pesticides are used in specific crops in accordance with good agricultural practice;
7. To require if and when necessary, of every handler of these products, the submission to the FPA of a report stating the quantity, value of each kind of product exported, imported, manufactured, produced, formulated, repacked, stored, delivered, distributed, or sold;
8. Should there be any extraordinary and unreasonable increases in prices or a severe shortage in supply of pesticides, or imminent dangers or either occurrences, the FPA is empowered to impose such controls as may be necessary in the public interest, including but not limited to such restrictions and controls as the imposition of price ceilings, controls on inventories, distribution and transport, and tax-free importations of such pesticides or raw materials thereof as may be in short supply.

⁵ CONST., art. II, sec. 16 provides:

SECTION 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.

⁶ CONST., art. III, sec. 1 provides:

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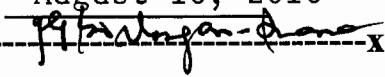
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4. To promulgate rules and regulations for the registration and licensing of handlers of these products, collect fees pertaining thereto, as well as the renewal, suspension, revocation, or cancellation of such registration or licenses and such other rules and regulations as may be necessary to implement this Decree;
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4. To prevent the importation of agricultural commodities containing pesticide residues above the accepted tolerance levels and to regulate the exportation of agricultural products containing pesticide residue above accepted tolerance levels;
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There was science, but it was uncertain.

The precautionary principle should also be qualified by transience as science-progressive and must be cost-effective. Environmental measures must “ensure . . . benefits at the lowest possible cost.”⁷

However, I agree that the precautionary principle does not make sense if there is absolutely no proof of causation.

Fourth, I do not see the application of the equal protection clause. The discrimination against large plantation owners enjoying huge economies of scale is, at this point, speculative.

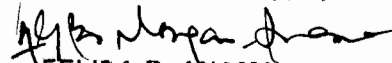
Lastly, nothing in this Decision should, in my view, be construed as a negation of the findings of fact of the trial court. This is especially with regard to the testimony of the persons affected by the aerial spray.

The broad construction of the prohibition in the Ordinance should not be viewed as erasing the experience of the residents of Davao City. In other words, government still needs to address their problems with the most urgent dispatch.



MARVIC M.V.F. LEONEN
Associate Justice

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SUPREME COURT

⁷ United Nations Framework Convention on Climate Change, art. 3(3).