

ARTHURO BARSOBIA, PETITIONER, VS. PAQUITO D. MELICOR, OIC-REGIONAL TECHNICAL DIRECTOR (SG-24)

Ponente: CONTRERAS, J.

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CONTRERAS, J.:

Before the Court is a Petition for Review under Rule 43 of the 1997 Rules of Civil Procedure assailing the: (1) Decision^[1] dated February 7, 2012 of the Office of the Ombudsman-Mindanao (Ombudsman-Mindanao) in Case No. OMB-M-A-09-436-J for Grave Misconduct; Conduct Prejudicial to the Best Interest of the Service filed by petitioner Arturo S. Barsobia against respondents Paquito D. Melicor, Agnes A. Dejas, Rogelio A. Behiga; and (2) Order dated May 17, 2012 denying petitioner's motion for reconsideration.

The relevant facts, gathered from the petition, the comment thereon of private respondents, their respective annexes, including the Orders of the Ombudsman, and other pleadings filed by the parties, are as follows:

Petitioner Arturo S. Barsobia, who claims to be an actual occupant of a portion of Lot No. 2525 and 2526, filed a complaint before Ombudsman-Mindanao charging the employees of the Department of Environment and Natural Resources (DENR), Region 10, Cagayan de Oro City, namely: Paquito Melicor, Officer-in-Charge (OIC) of the Office of the Regional Technical Director; Rogelio A. Behiga, Chief, of the Isolated Survey Section; and Agnes A. Dejas, OIC, Chief of the Regional Surveys Division, with Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service docketed as Case No. OMB-M-A-09-436-J.

The administrative complaint,^[2] as summarized by the Ombudsman-Mindanao, in essence, alleged that the respondents anomalously approved the subdivision plan of Trinidad Go based on: (1) Cagayan de Oro City's Ordinance No. 10560-2007 dated April 2, 2007; (2) Section 569 of the DENR Administrative Order (DAO) 98-12; and (3) Executive Order (EO) 258, dated June 28, 2000; that Ordinance No. 10560-2007 referred to the approval of the application of Fil-Estate Properties, Inc., and not of Trinidad Go; that respondents other basis in approving Trinidad Go's subdivision plan were DAO 98-12, Executive Order (EO) 258, the letter of the Solicitor General and the Certification of Atty. Jerlie-Luis Requerme; that the letter of the Solicitor General declared that the survey lots may be approved only if the same are not subject of any pending case; that the approved subdivision plan of Trinidad Go, however, is facing reversion proceedings, and that the respondents violated the DENR rules and regulations when they approved the subdivision plan of the property of Trinidad Go as it has already been previously surveyed and was already undergoing development.

Of the three respondents, only respondents Melicor and Dejas filed a counter-affidavit since the Ombudsman-Mindanao's directive to Rogelio A. Behiga was returned unserved on the ground that he had already retired from service.

In their counter-affidavit,^[3] Melicor and Dejas, as summed up by the Ombudsman-Mindanao, branded the allegations against them as a sham. They averred that it is not only the ordinance and the certification from Atty. Requerme which they used as basis in approving the subdivision plan of Trinidad Go because they also made inquiries prior to its approval, namely: (1) a dialogue with the petitioner conducted by the Regional Director of

the DENR-Region 10 on November 21, 2006; (2) the endorsement to the Legal Services Division for inquiry with the DENR Central Office on the reversion of the land; (3) a research made by them on whether the CENRO of Cagayan-Initao could issue a Certification specifically determining whether Lot Nos. 2525 and 2526 were within the alienable and disposable area; and (4) the agreement of the parties that was attached to the survey returns.

Further, respondents averred that there was no proof to show that they approved the survey with evident bad faith and manifest partiality, or that they maneuvered and orchestrated the proceedings in the approval of the survey returns, or that they demanded and received money in exchange for their signatures. They claimed that the approval of the survey returns submitted by the surveyors passes through several sections in order to ascertain whether the lot overlaps with the boundaries of other adjacent lots or whether prior approvals were already given to that particular lot. They claimed that it is their function to approve the survey results after analysis, verification, conduct of dialogues when needed, referral to a higher authority, conduct of research and investigation or to reject them if it violates any law. Furthermore, they maintained that in their long years of service in the government, they have always adhered to the conduct expected of them.

In Reply, petitioner persistently assailed the approval of the subdivision plan of Trinidad Go arguing that Ordinance No. 10560-2007 pertained to Fil-Estate Properties and not Trinidad Go. He averred that Trinidad Go cannot consolidate for a subdivision plan because there was no approved plan that was assigned by the Regional Director of the Bureau of Lands to her. Further, he asserted that the plan covering Lot Nos. 2525 and 2526, a portion of which belongs to Trinidad Go, was already cancelled. Furthermore, he alleged that the Original Certificate of Title (OCT) No. 0-596 which covered the lots included in Trinidad Go's subdivision plan included timberland and forest reservations.

In its February 7, 2012 Decision, the Ombudsman-Mindanao dismissed petitioner's administrative complaint, thus:

WHEREFORE, PREMISES CONSIDERED, for want of substantial evidence, the administrative complaint charges against respondents are DISMISSED.

Petitioner's motion for reconsideration was likewise denied.

Issues

- Whether or not there is no evidence on record that would show the approval of the subdivision plan of Lot No. 20, PCS-10-000497;
- Whether or not respondents violated R.A. 3019, Section 3 (e) in view of their highly unlikely approval of the subdivision plan of Trinidad Go.

The Court's Ruling

The petition is unmeritorious.

By statute and regulation, a decision of the Ombudsman absolving the respondents of the administrative charge is final and unappealable.[4]

Under Section 13(8) Article XI of the Constitution, the Office of the Ombudsman is authorized to promulgate its own rules of procedure. In this connection, the Office of the Ombudsman issued Administrative Order No. 7, Series of 1990 (Rules of Procedure of the Office of the Ombudsman). Section 7, Rule III thereof, before it was amended by Ombudsman Administrative Order No. 17, Series of 2003 (Amendment of Rule III, Administrative Order No. 7), provides that:

Sec. 7. FINALITY OF DECISION. — Where the respondent is absolved of the charge and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari shall have been filed by him as prescribed in Section 27 of RA 6770.

This rule is, in turn, based on Section 27 of Republic Act No. 6770 (RA No. 6770) or the Ombudsman Act, which states, that:

Section 27. Effectivity and Finality of Decisions. — (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

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Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

It is clear, from the above-quoted regulation and statute, that a decision of the Ombudsman absolving the respondents of an administrative charge is final and unappealable. This has been categorically settled in the case of *Barata v. Abalos, Jr.*,^[5] where it held, thus:

The above-quoted provision explicitly provides that where the respondent is absolved of the charge, the decision shall be final and unappealable. Although the phrase "(W)hen the respondent is absolved of the charge" is not one of those instances enumerated in Section 27 of R.A. 6770 wherein the decision shall become final and unappealable, it is implicit in Section 27, and with greater reason, that decisions of the Ombudsman absolving the respondent of the charge, should be final and unappealable.

The case of *Office of the Ombudsman vs. Alano*,^[6] echoed the ruling in *Barata*, thus:

From the above constitutional and statutory provisions and Rule, there are two instances where a decision, resolution or order of the Ombudsman becomes final and unappealable: (1) where the respondent is absolved of the charge; and (2) in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary.

In the instant case, petitioner, in its Resolution dated August 14, 1998, exonerated respondent of the administrative charge. It is implicit in Section 27 of R.A. No. 6770 and Section 7, Rule III of Administrative Order No. 07 that a decision absolving or exonerating respondent of the charge is final and unappealable, meaning, immediately executory. In *Alba v. Nitorreda*, we upheld the validity of the provisions of Section 27 of R.A. No. 6770 and Section 7, Rule III of Administrative Order No. 07 providing for the immediate finality and non-appealability of the decisions, orders, resolutions, or directives of the Ombudsman in certain cases and declaring that such provisions do not infringe on the due process clause, for the right of appeal is not a natural right, nor a part of due process; it is merely a statutory privilege and may be exercised only in the manner provided by law.

Again, in the case of *Reyes v. Belisario, et al.*,^[7] the final and unappealable character of the decision of the Ombudsman dismissing the administrative complaint was reiterated, to wit:

Notably, exoneration is not mentioned in Section 27 as final and unappealable. However, its inclusion is implicit for, as we held in *Barata v. Abalos*, if a sentence of censure, reprimand and a one-month suspension is considered final and unappealable, so should exoneration.

The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an

administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or fine a equivalent to one month salary.

Further, the case of Tolentino v. Loyola, et al.,^[8] citing Reyes v. Belisario, et al., reiterated the ruling that a decision of the Ombudsman absolving the respondent of an administrative charge is final and unappealable.

With the dismissal therefore, of the administrative complaint against the respondents for want of substantial evidence, the assailed Decision⁹ dated February 7, 2012 of the Ombudsman-Mindanao has become final and is, thus, unappealable.

WHEREFORE, premises considered, the instant petition is hereby DISMISSED.

SO ORDERED.

[*]Badelles, J., Ch., and Santos, JJ., concur.

[*] Acting Chairperson vice J. Lloren per raffle dated January 29, 2015.

[1] Rollo, pp. 94-100.

[2] No copy of the complaint filed before the Ombudsmant was attached in the petition.

[3] No copy of the counter-affidavit was attached in the petition.

[4] Prudencio Reyes v. Simplicio Belisario, et al., G.R. No. 154652, August 14, 2009 .

[5] G.R. No. 142888, June 06, 2001.

[6] G.R. NO. 149102, February 15, 2007.

[7] G.R. No. 154652. August 15, 2009

[8] G.R. No. 153809, July 27, 2011.

[9] Rollo, pp. 94-100.

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