

ARTURO Q. PELGONE, COMPLAINANT, VS. RODOLFO M. ESPARTINEZ, SHERIFF IV, REGIONAL TRIAL COURT, BRANCH V, LEGAZPI CITY, RESPONDENT.

A.M. No. P-94-1019. December 13, 1994

Ponente: VITUG, J.

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VITUG, J.:

Arturo Q. Pelgone, in his letter-complaint of 18 February 1994, charged respondent Sheriff with grave abuse of authority amounting to gross misconduct.

Complainant averred that he was one of the oppositors in LRC Case No. N-400. On 11 October 1984, a decision was rendered by the Regional Trial Court ("RTC"), Branch 5, Legazpi City, granting the registration of three (3) subject parcels of land in the name of one Felisa Marbella. The decision became final and executory. On 08 February 1993, the RTC issued a writ of possession, commanding respondent Sheriff to place Marbella in possession of the premises. In accordance therewith, the oppositors were ordered to vacate the property within twenty (20) days from notice. Following oppositors' failure to vacate the premises, Marbella filed a motion for the issuance of a writ of demolition. After hearing, a writ of demolition, dated 15 December 1993, was issued, ordering the removal of all improvements and constructions on the area. The writ of demolition was served by respondent Sheriff on the oppositors on 20 December 1993, and the latter were again directed to vacate the property within twenty (20) days from notice. The period was extended to thirty days, or until 20 January 1994, in view of the holidays.

On 24 January 1994, respondent Sheriff, accompanied by some police officers, proceeded to demolish the house of complainant and of one Romualdo Magas. Complainant allegedly requested respondent Sheriff not to start the demolition for a few minutes to allow the complainant to take a snack. Respondent Sheriff acquiesced. Upon complainant's return, however, he found that his property was already demolished. The steel gate and twelve (12) wooden beams were sawed off. Ten (10) pieces of G.I. sheets were torn, rendering them useless. Twenty (20) pieces of "lawanit board" used as double walling and ceiling were carelessly and wantonly detached. The area was immediately fenced off to prevent complainant from getting the demolished items, water pipes and hollow blocks.

In his comment, dated 14 June 1994, respondent Sheriff denied the allegations of complainant. He asserted that on 24 January 1994, at around seven o'clock in the morning, he and Nestor Fernandez, a Sheriff from the Office of the Clerk of Court, RTC, Legazpi City, left for Barangay Ilawod, Guinobatan, Albay, where the houses of complainant and Romualdo Magas were located. The Sheriffs requested Nancy Salting, the Barangay Captain, to be present at the demolition. The Barangay Captain acceded; she went to the house of complainant to inform him of the matter but the latter replied that he had already been notified thereof. Salting thereupon rejoined the demolition team and gave the go-signal to proceed with the demolition. The group went to the site at around nine o'clock in the morning but found the gate of the premises padlocked. They waited for a while for complainant;

when the latter failed to show up, the demolition team decided to break-open the padlock and to enter the premises. Respondent Sheriff explained that he gave prior instructions to the team, composed of twelve (12) workers, to observe due care in removing the main structures of the house, considering that it appeared to be relatively an old one. At the time, the house was already devoid of house belongings, furniture, appliances and other personal effects of the family of complainant. The demolition work proceeded. Window jalousies, made of glass, were first removed to avoid breakage. The trusses and beams were detached, frame by frame, and those where the bolts had turned rusty were sawn at the connecting ends. The G.I. roofings, the walls (consisting of wooden materials), and the ceiling were carefully detached. The concrete walls and fence were smashed since there was no other way of removing them. Complainant and his own workers, including a plumber, took charge of removing the plumbing installations, the water pump, pipes and other fixtures in the bathroom and kitchen. All the materials removed from the premises were loaded in a truck provided by the Office of the Mayor of Guinobatan upon the request of complainant. The demolition of the structure took about three (3) days. Complainant and his own workers were at the demolition site until the work was completed on 27 January 1994. Respondent Sheriff thereupon advised complainant to remove all the remaining materials at the demolition site, consisting of debris, rubbles from concrete walls and filling materials. Complainant assured respondent, however, that he (complainant) had no need of them.

On 31 January 1994, respondent delivered the physical possession of two lots (Lot No. 2 was bought by Veronica Miranda and Rosita Olavario) to Felisa Marbella, which delivery was acknowledged by her daughter Fem Julia E. Paladin. On 02 February 1994, respondent submitted his return.

Respondent Sheriff's comment was supported by the affidavits of Ilawod Barangay Captain Nancy M. Salting,[1] Sheriff Angel C. Conejero,[2] PO3 Tobias B. Rabe, Jr.,[3] SPO1 Rodrigo P. Paraiso,[4] municipal employee Dioscoro Acabado, Jr.,[5] and demolition team members Reynaldo C. Rodriguez and Joffre F. Arteta,[6] all attesting to the fact that respondent Sheriff did not act in any wanton or reckless manner in effecting the demolition order of the court.

In a memorandum, dated 21 October 1994, the Office of the Court Administrator, to which the case was referred for evaluation and report, concluded that respondent Sheriff did not abuse his authority in effecting the demolition work but that he was unfortunately remiss in forcing open the main gate and destroying the padlock without first securing from the court a break-open order. These findings and conclusion of the Office of the Court Administrator accord with the evidence and applicable jurisprudence.[7] We believe, however, that the recommended fine should instead be fixed at P1,000.00.

WHEREFORE, we find respondent Sheriff to have fallen short of circumspection in properly carrying out the writ of execution, and he is hereby ordered to pay a fine of P1,000.00. He is further cautioned against a repetition of the same or similar offense in the future.

SO ORDERED.

Bidin, Romero, and Melo, JJ., concur.
Feliciano, J., (Chairman), on leave.

[1] Rollo, p. 52.

[2] Rollo, p. 55.

[3] Rollo, p. 54.

[4] Rollo, p. 59.

[5] Rollo, p. 58.

[6] Rollo, p. 52.

[7] See *Wearever Textile Mills, Inc. vs. Bagaybagayan*, 109 SCRA 412.

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