

MARY SUSAN MAE P. TORRES, PETITIONER, VS. SPS. FILOLOGO C. FELIX & ANNIE L. FELIX, RESPONDENTS.

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Review[1] under Rule 43 of the Revised Rules of Court seeking to reverse and set aside the Decision[2] dated March 24, 2012 and the Order[3] dated May 29, 2014 of the Office of the Deputy Ombudsman for Luzon in OMB-L-A-11-0213-D entitled “Sps. Filologo Felix and Annie L. Felix #20 Nakpil St., San Lorenzo Village Makati City, Complainants, versus Mary Susan Mae Paco Torres Municipal Engineer Municipal Engineer's Office Cabangan, Zambales, Respondent.”, the dispositive portions of which read:

Decision dated March 24, 2012

“WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered finding respondent MARY SUSAN MAE PACO TORRES guilty of Simple Neglect of Duty and meting upon her the penalty of SUSPENSION FROM WORK for three (3) months without pay.

The Secretary of the Department of Interior and Local Government is hereby directed to implement this DECISION immediately upon receipt hereof pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17 (Omnibus Rules of Procedure) in relation to Memorandum Circular No. 01, series of 2006 dated 11 April 2006 and to promptly inform this Office of the action taken thereon.

SO DECIDED”

Resolution dated May 29, 2014

“WHEREFORE, the Motion for Reconsideration filed by respondent is hereby DENIED.

SO ORDERED.”

The facts are:

In their Complaint-Affidavit[4] filed against petitioner Mary Susan Mae Paco Torres (Torres for brevity), respondents Sps. Filologo Felix and Annie L. Felix (Sps. Felix for brevity) alleged that: they are the owners of a parcel of land covered by Tax Declaration No. 0003-00083 which they acquired by means of accretion, the same being located along the shores of the South China Sea; on February 2, 2009, Billy “Bogs” Domil, on orders of Dennis and Mitos White (Sps. White for brevity), with the cooperation and participation of several workers whose identities were not known to respondents Sps. Felix, commenced the construction of a residential building on the said parcel of land; upon learning of the said construction, they sent a letter[5] calling the attention of the Office of the Municipal Mayor of Cabangan, Zambales and the petitioner Torres regarding the illegal construction over their property and inquired if the same was issued a building permit; on February 24, 2009, petitioner Torres, acting as the Municipal Engineer of Cabangan, Zambales, wrote respondent Filologo Felix admitting that as of even date no building permit was issued for the said construction[6]; they repeatedly requested from petitioner Torres to issue a cease and desist order against the Sps. White to stop the construction, but no action was taken by

petitioner Torres despite full knowledge that Sps. White failed to comply with the requirements of P.D. 1096; the failure and continued refusal of petitioner Torres to issue the cease and desist order was tantamount to gross ignorance of the law and constitutes manifest partiality, evident bad faith and gross inexcusable negligence that made her liable under Section 3(e) of R.A. No. 3016, otherwise known as the Anti-Graft and Corrupt Practices Act.

In her Counter-Affidavit, petitioner Torres averred that: on February 24, 2009, in response to the letter of respondent Felologo Felix, she wrote the latter informing him that Mitos White, thru her representative, has a pending application for a building permit; on the same date, she also wrote a letter[7] to the District Engineer of the Department of Public Works and Highways (DPWH), Zambales First Engineering Office in Iba, Zambales, requesting information on “whether or not Tax Declaration, Deed of Sale and receipts of payment of real property tax may be considered as substantial compliance for the purpose of building permit application in lieu of the OCT/TCT.”; on March 11, 2009, she wrote a letter[8] to the counsel of Mitos White informing said counsel that in view of her inability to submit the required OCT/TCT, her office cannot issue a Building Permit for her proposed residential building; she also wrote to the counsel of respondents Sps. Felix that she cannot issue a cease and desist order for she believed that the defect was not on the plans and specifications and that the ownership issue is not within her jurisdiction to decide[9]; Mitos White appealed her decision to the Office of the Secretary of DPWH which then rendered a decision[10] and was received by her in December 2009; however, when she inspected the building, there was no more construction going on, hence, there was no need to issue a stoppage order as there was nothing to stop; and, she did not receive further complaints from respondents Sps. Felix.

For petitioner Torres' failure to issue a cease and desist order against Sps. White despite full knowledge that the latter failed to comply with the requirements under P.D. 1096, respondents Sps. Felix filed a complaint before the Office of the Deputy Ombudsman for Luzon charging petitioner Torres of grave misconduct and gross neglect of duty.

On March 24, 2012, the Office of the Deputy Ombudsman for Luzon approved the assailed decision penned by Roberto Ricardo O. Kanapi, Graft Investigation and Prosecution Officer I. Petitioner Torres moved for its reconsideration, however, the same was denied in an Order dated May 29, 2014. Hence this petition for review assigning the following errors:

“I WITH DUE RESPECT, THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON ERRED WHEN HE ISSUED THE DECISION DATED 24 MARCH 2012 AGAINST THE HEREIN PETITIONER AND AFFIRMED THE SAME THRU ITS ORDER DATED 29 MAY 2014.

II WITH DUE RESPECT, THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON ERRED WHEN PETITIONER WAS ORDERED SUSPENDED FOR THREE (3) MONTHS FOR SIMPLE MISCONDUCT.[11]

III. THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON DID NOT CONSIDER THAT THE PROPER REMEDY OF THE RESPONDENTS IS BEFORE THE COMPETENT COURT DUE TO QUESTION OF OWNERSHIP. RESPONDENTS ALSO FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.[12]

The petition is devoid of merit.

Contrary to petitioner Torres' contention, the Office of the Ombudsman did not err in finding her guilty of simple neglect of duty and ordered her suspension for three (3) months without pay.

Neglect of duty implies the failure to give proper attention to a task expected of an employee arising from either carelessness or indifference.[13] The facts set forth show that petitioner Torres is the Municipal Engineer of

Cabangan, Zambales. As such, she is responsible for the regulation and management of the affairs related to and connected with her office. Neglect or failure to discharge the duties of the office constitutes negligence which warrants the imposition of administrative sanctions.

It must be recalled that petitioner Torres knew that an illegal construction was being done at the property of respondents Sps. Felix. The construction started even without the corresponding building permit required before a construction should commenced, and yet, despite such knowledge, petitioner Torres did not take appropriate action to stop the same. She should have issued a cease and desist order to stop said construction considering the fact that building permits are condition precedent in all constructions being made over a parcel of land. Nor did she conduct a formal investigation on the matter. As a Municipal Engineer, petitioner Torres is bound to know the functions of her Office.

Section 301 of P.D. 1096, otherwise known as the National Building Code of the Philippines, provides that, viz:

“No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the building official assigned in the place where the subject building is located or the building work is to be done.”

The foregoing categorically and clearly provides that no construction should commence without the required building permit. Since petitioner Torres knew that the subject construction was undertaken without first securing a building permit, it is her duty to investigate and even issue a work stoppage order, which under the circumstances were expected of her. This authority is incumbent upon her pursuant to Section 5.4, Rule VIII, Implementing Rules and Regulations of P.D. 1096 which grants a building official to issue a work stoppage order to stop the construction of a building without the requisite permit. Thus, her argument that she is not obliged to issue a cease and desist order because the matter brought before her was not on the plans and specifications, is untenable.

Petitioner Torres' inaction to the valid request of respondents Sps. Felix to issue a cease and desist order after she came to know that the questioned construction had no building permit is what made her liable for simple neglect of duty. Under Section 205 of P.D. 1096, the Building Official shall be responsible for carrying out the provisions of this Code in the field as well as enforcement of orders or decisions pursuant thereto. Petitioner Torres, as a building official, failed to perform her duty to the prejudice of herein respondents Sps. Felix.

Section 22, Rule XIV of the Omnibus Civil Service Rules and Regulations classifies simple neglect of duty as a less grave offense punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and dismissal for the second offense.[14] Since petitioner Torres was found liable for simple neglect of duty and it seems to be her first offense, the Office of the Ombudsman did not err in meting her the penalty of suspension for three months without pay.

Petitioner Torres contends that the proper remedy of respondents Sps. Felix is before the proper court due to question of ownership and that they failed to exhaust administrative remedies.

Petitioner Torres herself is in a quandary as to what she should do. She suggests that respondents Sps. Felix should go to the proper court due to question of ownership, and yet, she also asserts that respondents Sps. Felix failed to exhaust the doctrine of administrative remedies. Going to court and exhaustion of administrative remedies involve two different fora and jurisdiction. These two remedies are inconsistent with each other. Besides, exhaustion of administrative remedy is not applicable in this case. The Ombudsman has the power to investigate both elective and appointive officials in the government. This power to determine and impose administrative liability is not merely recommendatory but actually mandatory,[15] and Rule 43 of the Rules of Court should be the proper mode of appeal from an Ombudsman's decision in administrative cases.[16]

Further, despite the passage of the Local Government Code in 1991, the Ombudsman retains concurrent jurisdiction with other agencies and tribunals to investigate elective and appointive officials of the government. In the case of *Franklin Alejandro vs. Office of the Ombudsman Fact-finding and Intelligence Bureau*[17] it was held that:

“In administrative cases involving the concurrent jurisdiction of two or more disciplining authorities, the body where the complaint is filed first, and which opts to take cognizance of the case, acquires jurisdiction to the exclusion of other tribunals exercising concurrent jurisdiction.”

Thus, the filing of this case before the office of the Ombudsman excluded any other offices or tribunals to exercise jurisdiction over the same. Jurisdiction once acquired is not lost upon the instance of the parties, but continues until the case is terminated.[18] Having already taken cognizance of the complaint against petitioner Torres involving her neglect of duty to issue a cease and desist order despite knowledge of the construction and knowing for a fact that the same commenced without the requisite building permit, the Office of the Ombudsman retained jurisdiction over this case notwithstanding petitioner Torres' contention that the same should first be elevated to the DPWH for exhaustion of administrative remedies since the case involved a violation of P.D. 1096 also known as the National Building Code of the Philippines.

The Code of Conduct and Ethical Standards for Public Officials and Employees lays down the state policy to promote a high standard of ethics in public service, and enjoins public officials and employees to discharge their duties with utmost responsibility, integrity and competence.[19] Petitioner as the Municipal Engineer of Cabangan, Zambales, is expected to abide by this standard of ethics and can be held accountable for acts claimed to have been performed in connection with her official duties specifically if she acted beyond the scope of her authority, or failed to perform or neglected to perform the same.

WHEREFORE, premises considered, the petition is hereby DENIED for lack of merit and accordingly DISMISSED.

SO ORDERED.

Gonzales-Sison, M., and Cruz, R. A ., JJ., concur.

[1] Rollo, pp. 11-28

[2] *id.*, pp. 57-68

[3] *id.*, pp. 96-100

[4] *id.*, pp. 30-33

[5] *id.*, pp. 46-47

[6] *id.*, p. 39

[7] *id.*, p. 49

[8] *id.*, p. 50

[9] *id.*, p. 51

[10] *id.*, pp. 102-105

[11] *id.*, p. 17

[12] *id.*, p. 20

[13] *Cabalit vs. Commission on Audit-Region VII*, 663 SCRA 133

[14] *Civil Service Commission vs. Rabang*, G.R. No. 167763, March 14, 2008

[15] *Fajardo vs. Office of the Ombudsman*, 679 SCRA 97

[16] *Dimagiba vs. Espartero*, 676 SCRA 420

[17] G.R. No. 173121, April 3, 2013

[18] *Flores vs. Montemayor*, 651 SCRA 396

[19] *Bagong Kapisanan sa Punta Tenement, Inc. vs. Dolot*, 680 SCRA 164

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