

POLICE GENERAL LEVY MACASIANO (RET.), IN HIS CAPACITY AS THE CONSULTANT OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH) TASK FORCE ON DEMOLITION AND/OR IN HIS PERSONAL CAP...

G.R. No. 107921. July 01, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Petitioner seeks to have this Court declare as unconstitutional Sections 28 and 44 of Republic Act No. 7279, otherwise known as the Urban Development and Housing Act of 1992. He predicates his locus standi on his being a consultant of the Department of Public Works and Highways (DPWH) pursuant to a Contract of Consultancy on Operation for Removal of Obstructions and Encroachments on Properties of Public Domain (executed immediately after his retirement on 2 January 1992 from the Philippine National Police) and his being a taxpayer. As to the first, he alleges that said Sections 28 and 44 "contain the seeds of a ripening controversy that serve as drawback" to his "tasks and duties regarding demolition of illegal structures"; because of the said sections, he "is unable to continue the demolition of illegal structures which he assiduously and faithfully carried out in the past." [1] As a taxpayer, he alleges that "he has a direct interest in seeing to it that public funds are properly and lawfully disbursed." [2]

Republic Act No. 7279 was approved on 24 March 1992 and published in the 4 May 1992 issue of the Official Gazette. [3] The challenged provisions therein read as follows:

"SEC. 28. Eviction and Demolition. -- Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

- (a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;
- (b) When government infrastructure projects with available funding are about to be implemented; or
- (c) When there is a court order for eviction and demolition.

In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:

- (1) Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;
- (2) Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;
- (3) Presence of local government officials or their representatives during eviction or demolition;
- (4) Proper identification of all persons taking part in the demolition;

- (5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;
- (6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;
- (7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and
- (8) Adequate relocation, whether temporary or permanent: Provided, however, That in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgment by the court, after which period the said order shall be executed: Provided, further, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

The Department of the Interior and Local Government and the Housing and Urban Development Coordinating Council shall jointly promulgate the necessary rules and regulations to carry out the above provision.

x x x

SEC. 44. Moratorium on Eviction and Demolition. -- There shall be a moratorium on the eviction of all program beneficiaries and on the demolition of their houses or dwelling units for a period of three (3) years from the effectivity of this Act: Provided, That the moratorium shall not apply to those persons who have constructed their structures after the effectivity of this Act and for cases enumerated in Section 28 hereof."

Petitioner maintains that the said provisions are unconstitutional because:

- "(a) They deprive the government, and more so, private property owners of their property without due process of law and without compensation;
- (b) They reward, instead of punish, what this Honorable Court has categorically declared as unlawful acts;
- (c) They violate the prohibition against legislation that takes away one's property to be given to plain interlopers;
- (d) They sweep overbroadly over legitimate concerns of the police power of the State; and
- (e) They encroach upon the judicial power to execute its valid judgments and orders."[4]

On 10 December 1992, we required the respondents to comment on the petition.

In its Comment[5] filed on 15 January 1993; respondent National Mapping and Resource Information Authority alleges that the implementation of the assailed sections of the Act does not belong to or fall within its jurisdiction. It disagrees with the petitioner's stand that the said sections are unconstitutional and avers that Section 28 merely provides for the "humanitarian approach" towards the less privileged citizens and does not in fact prohibit but merely discourages eviction or demolition, while Section 44 only covers program beneficiaries.

On 15 January 1993, the Realty Owners Association of the Philippines, Inc. filed a motion to intervene[6] alleging that it has a legal interest in the success of the petition and is in full accord with it. This Court required the parties to comment thereon.

On 16 February 1993, the Office of the Government Corporate Counsel (OGCC) filed a comment[7] for the respondent National Housing Authority (NHA) informing this Court that "in a letter of respondent NHA

addressed to the office of the undersigned counsel, dated 29 January 1993, x x x, the former categorically expressed as its official stand on the instant petition that Sections 28 and 44 of Republic Act No. 7279 are indeed unconstitutional," and that "after a circumspect evaluation of the petition We find no cogent reason not to support the position heretofore taken by respondent NHA." Said office then prays that the instant petition be given due course.

On 14 May 1993, the Solicitor General filed his Comment to the petition. He maintains that the instant petition is devoid of merit for non-compliance with the essential requisites for the exercise of judicial review in cases involving the constitutionality of a law. He contends that there is no actual case or controversy with litigants asserting adverse legal rights or interests, that the petitioner merely asks for an advisory opinion, that the petitioner is not the proper party to question the Act as he does not state that he has property "being squatted upon" and that there is no showing that the question of constitutionality is the very *lis mota* presented. He argues that Sections 28 and 44 of the Act are not constitutionally infirm.

Up to this time, no comment has been submitted by the parties on the motion to intervene. Considering, however, that the issues are clear and simple enough, this Court dispenses with the need for a comment on the said motion, denies the same and, after deliberating on the issues raised and the arguments adduced by the parties in the petition and comments, declares this petition to be without merit.

It is a rule firmly entrenched in our jurisprudence that the constitutionality of an act of the legislature will not be determined by the courts unless that question is properly raised and presented in appropriate cases and is necessary to a determination of the case, i.e., the issue of constitutionality must be the very *lis mota* presented.[8] To reiterate, the essential requisites for a successful judicial inquiry into the constitutionality of a law are: (a) the existence of an actual case or controversy involving a conflict of legal rights susceptible of judicial determination, (b) the constitutional question must be raised by a proper party, (c) the constitutional question must be raised at the earliest opportunity, and (d) the resolution of the constitutional question must be necessary to the decision of the case.[9] A proper party is one who has sustained or is in danger of sustaining an immediate injury as a result of the acts or measures complained of.[10]

It is easily discernible in the instant case that the first two (2) fundamental requisites are absent. There is no actual controversy. Moreover, petitioner does not claim that, in either or both of the capacities in which he is filing the petition, he has been actually prevented from performing his duties as a consultant and exercising his rights as a property owner because of the assertion by other parties of any benefit under the challenged sections of the said Act. Judicial review cannot be exercised in *vacuo*. Judicial power is the "right to determine actual controversies arising between adverse litigants." [11]

In reality, his petition is one for declaratory relief as he prays therein that "his rights as well as those of private landowners be clearly defined and his duties under the Constitution and the pertinent laws be clearly stated with respect to the demolition of illegal structures on public and private lands." [12] Even so, it is still not viable since among the essential requisites of a petition for declaratory relief are that: (a) there must be a justiciable controversy, (b) the controversy must be between persons whose interests are adverse and (c) the party seeking declaratory relief must have a legal interest in the controversy.[13] Furthermore, an action for declaratory relief does not fall within the original jurisdiction of the Supreme Court even if only questions of law are involved.[14] True, we have said that such a petition may be treated as one for prohibition[15] or *mandamus*[16] if it has far-reaching implications and raises questions that need to be resolved; but the exercise of such discretion presupposes, at the outset, that the petition is otherwise viable or meritorious.

The petitioner is not likewise a "proper party." As a consultant of the DPWH under the "Contract for Consultancy

x x x," he is not vested with any authority to demolish obstructions and encroachments on properties of the public domain, much less on private lands. The consultancy contract limits his duties to the following: "(a) to organize and train selected DPWH personnel for the different Engineering Districts in the NCR in the techniques and methods of removing/demolishing illegal structures/stalls, etc., as well as in crowd control, self-defense and security procedures x x x; (b) to provide advice to the Secretary and other DPWH officials regarding prioritization of areas to be cleared of obstructions and encroachments; (c) to conduct field inspection from time to time of areas recommended for clearing; (d) to provide advice in developing appropriate standards and techniques in cost effective implementation of the removal and demolition of obstructions and encroachments x x x; and (e) to develop operational procedures that will institutionalize demolition processes." [17] Moreover, the consultancy contract expired on 31 December 1992 and the petitioner has not manifested that he obtained a renewal or extension thereof.

Nor does the petitioner claim that he is an owner of an urban property whose enjoyment and use would be affected by the challenged provisions of R.A. No. 7279.

Although the petitioner likewise anchors his locus standi on the fact that he is a taxpayer, it does not mean, however, that in each and every instance where such a ground is invoked, this Court is left with no alternative except to hear the parties. In *Tan vs. Macapagal*, [18] we clarified that "as far as a taxpayer's suit is concerned, this Court is not devoid of discretion as to whether or not it should be entertained."

We do not, as well, find an indubitable ground for the constitutional challenge. As this Court said through Mr. Justice Isagani A. Cruz in *Garcia vs. Executive Secretary*: [19]

"On the merits, We find that the constitutional challenge must be rejected for failure to show that there is an indubitable ground for it, not to say even a necessity to resolve it. The policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid in the absence of a clear and unmistakable showing to the contrary. To doubt is to sustain. This presumption is based on the doctrine of separation of powers which enjoins upon each department a becoming respect for the acts of the other departments. The theory is that as the joint act of Congress and the President of the Philippines, a law has been carefully studied and determined to be in accordance with the fundamental law before it was finally enacted."

We cannot end this resolution without a few words on the comment of the OGCC for public respondent National Housing Authority wherein the OGCC merely adopted the stand of the officer-in-charge of the Legal Department of the said Authority that the challenged sections of R.A. No. 7279 are unconstitutional. On its own, the OGCC did not even attempt to reason out why this petition should be granted or denied. It has obviously treated this case without the circumspection and seriousness expected of it especially in the light of the functions, duties and responsibilities of the NHA under the challenged Act. The OGCC should not have cursorily adopted the opinion of the officer-in-charge who acted on his own and who, apparently, did not even refer his opinion to the Board of Directors of the NHA.

WHEREFORE, for lack of merit, the instant petition is DISMISSED with costs against the petitioner.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Bidin, Griño-Aquino, Regalado, Romero, Nocon, Bellosillo, Melo, and Quiason, JJ., concur.

Padilla, J., on leave.

[1] Rollo, 8.

[2] Id., 5-6.

[3] Annex "B" of Petition; Id., 46, et seq.

[4] Rollo, 26.

[5] Rollo, 88-91.

[6] Id., 92-96.

[7] Id., 103-105.

[8] *People vs. Vera*, 65 Phil. 56, 82 [1937].

[9] *Dumlao vs. COMELEC*, 95 SCRA 392 [1980]; *National Economic Protectionism Association vs. Ongpin*, 171 SCRA 657 [1989]; *Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform*, 175 SCRA 343 [1989]; *Garcia vs. Executive Secretary*, 204 SCRA 516 [1991].

[10] *Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform*, supra, 364.

[11] *Muskrat vs. United States*, 219 U.S. 346 [1911], cited in *Allied Broadcasting Center, Inc. vs. Republic*, 190 SCRA 782 [1990].

[12] Rollo, 6.

[13] *Delumen vs. Republic*, 94 Phil. 287 [1954].

[14] *Remotigue vs. Osmeña*, 21 SCRA 837 [1967]; *Rural Bank of Olongapo vs. Commissioner of Land Registration*, 102 SCRA 794 [1981]; *Allied Broadcasting Center, Inc. vs. Republic*, supra, footnote no. 11.

[15] *De la Llana vs. Alba*, 112 SCRA 294 [1982].

[16] *Alliance of Government Workers vs. Minister of Labor and Employment*, 124 SCRA 1 [1983].

[17] Rollo, 44-45.

[18] 43 SCRA 677 [1972].

[19] Supra, footnote no. 9, at 522-523.

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