

RENE KNECHT AND CRISTINA DE KNECHT, PETITIONERS, VS. HON. ANIANO A. DESIERTO, AS OMBUDSMAN; HON. JEJOMAR BINAY, AS MAYOR OF MAKATI CITY; HON. PABLO CUNETA, AS MAYOR OF PASAY CIT...

G.R. No. 121916. June 26, 1998

Ponente: MARTINEZ, J.

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MARTINEZ, J.:

This is a petition for mandamus under Rule 65 of the Rules of Court which seeks to compel the Office of the Ombudsman to proceed with its preliminary investigation of respondents on complaint for violation of Section 3(e) of R.A. 3019 and thereafter to file the corresponding information in court against said respondents.

The pertinent facts of the case are as follows:

On July 6, 1990, the Republic of the Philippines filed with the Regional Trial Court of Pasay City an Amended Petition for Determination of Just Compensation for lands expropriated under B.P. Blg. 340. In said case, entitled “Republic of the Philippines v. Salem Investment Corporation, Ma. Del Carmen Roxas de Elizalde, Concepcion Cabarrus vda. de Santos, Mila dela Rama and Inocentes dela Rama, Heirs of Eduardo M. Lesaca and Carmen Padilla”, and docketed as Civil Case No. 7327, the Republic, as petitioner, sought the following reliefs from the court: 1) the appointment of commissioners under Section 5, Rule 67 of the Rules of Court for the determination of just compensation for the lands expropriated by B.P. Blg. 340; and, 2) the issuance of an order authorizing petitioner Republic to enter said properties and take possession thereof, the required deposit already made with the Philippine National Bank and consent having been obtained from the abovenamed respondents.[1]

On August 29, 1990, the Regional Trial Court granted the Motion for the issuance of a Writ of Possession filed by the Republic in Civil Case No. 7237. In the Writ of Possession it issued, said trial court commanded the City Sheriff of Pasay and or his deputies to serve the Writ, stating:

“WHEREAS, petitioner filed with this Court on August 15, 1990 a Motion for the issuance of a Writ of Possession to the end that petitioner be placed in possession of the properties expropriated by the Government by virtue of B.P. Bilang 340 after petitioner had deposited with the Philippine National Bank on August 9, 1990 the amount of TWELVE MILLION NINE HUNDRED SEVENTY THOUSAND THREE HUNDRED FIFTY (P12, 970, 350.00) PESOS representing ten (10%) percent of the approximate total market value of the properties expropriated;

WHEREAS, in the Order dated August 28, 1990, the Court GRANTED the aforesaid motion of petitioner and has directed the City Sheriff of Pasay City and/or his deputies, to place petitioner Republic of the Philippines in possession of the expropriated properties;

NOW THEREFORE, you are hereon commanded, pursuant to Section 4 of B.P. Bilang 340, to place the petitioner Republic of the Philippines to the immediate possession and disposition of the following properties and improvements thereon, including the power of demolition, if necessary, x x x”[2]

The Republic of the Philippines was henceforth placed in possession of the properties and the houses and other improvements thereon were subsequently demolished.

Petitioners eventually filed a complaint on November 19, 1992, with the respondent Ombudsman for violation of Section 3(e) of R.A. 3019, alleging that:

“That on or about August 30, 1990 to September 5, 1990, the said respondents confederating and in conspiracy with each other, caused the demolition of the 7 houses of the complainants in P. Lovina St. cor. F.B. Harrison St., Pasay City, with the aid of policemen against and over their objection with the use of force causing them undue injury through manifest partiality, gross inexcusable negligence or evident bad faith, since there is no writ of demolition authorizing said demolition, but simply on the basis of a writ of possession issued by Judge Sofronio Sayo, without notice to them, even as they were in adverse possession thereof.

“CONTRARY TO LAW.”[3]

Respondent Office of the Ombudsman, through the Hon. Conrado M. Vasquez, dismissed the complaint for lack of evidence on March 30, 1994, which petitioners received on May 7, 1994.

In his resolution, the Ombudsman reasoned out in this manner:

“The property referred to by complainants has been the object of expropriation proceedings where the complainant’s claim of ownership had already long been foreclosed by judicial action, thus at the time of demolition, complainants had no colorable title to the properties.

Perusing through the complaint sheet specifically the November 19, 1992 letter of counsel R. Gonzales, we note that it is admitted that the demolition was carried out on the basis of a writ of possession issued by Judge Sofronio Sayo.

“The above disclosure creates the impression that respondents were clothed with the proper judicial armor in causing the demolition and in view of the vehement protestation of complainants any ensuing violence, fracas or disorder would have been an inevitable consequence.

“Complainants appear to make an issue about the absence of a writ of demolition even if there was an earlier writ of possession issued by Judge Sofronio Sayo.

“The absence of a writ of demolition does not per se make respondents indictable under Sec. 3(e) of R.A. 3019 as they were merely constituting a full execution of a writ, thus complainants and their personal properties had to be removed from the premises and the real estate be placed fully in the possession of the government.

“It is observed that on the day of the demolition, complainant’s Administrator surnamed Gatil refused to accept and acknowledge the writ of possession thus prompting the demolition crew to initiate the tearing down of several structures.

“Since a writ of possession implies the delivery of possession of the land to the successful litigant, a writ of demolition must likewise issue especially considering that the latter writ is but a complement of the former which with the said writ of demolition would be ineffective. To require a successful litigant x x x to institute another action for the purpose of obtaining possession of the land adjudged to him would foster unnecessary litigation and result in multiplicity of suits. (Marcelo vs. Meneasis GIL No. L-15609m April 29, 1960)

“It must be noted that the expropriation of the subject property had been unduly protracted and that a decisive/concrete action had to be undertaken to avert further delay in the EDSA Extension project.

“There being sufficient justification and substantial legal grounds to take possession of the property and effect demolition, we find no basis to indict respondents for violation of Sec. 3(e) of R.A. 3019.” [4]

Petitioners filed a motion for reconsideration of the said resolution but the same was denied in an Order dated June 3, 1995.[5]

Hence, the present petition, with petitioners setting forth the following reasons relied upon for its allowance:

I

THAT RESPONDENT OMBUDSMAN IS NEGLECTING THE PERFORMANCE OF AN ACT WHICH THE LAW ENJOINS AS A DUTY RESULTING FROM AN OFFICE IN NOT PROCEEDING WITH THE PRELIMINARY INVESTIGATION AND FILING THE CORRESPONDING INFORMATION IN COURT AGAINST RESPONDENTS FOR VIOLATION OF SEC. 3(E), R.A. 3019;

II

THAT PETITIONERS HAVE NO PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW EXCEPT THE PRESENT PETITION.

It is the contention of petitioners that the Ombudsman could be compelled to perform his duty to conduct a preliminary investigation as he had gravely abused his discretion in dismissing the complaint for violation of Section 3(e) of R.A. 3019. Such complaint, noted petitioners, was resolved without the Ombudsman ordering the submission of counter-affidavits. Even though in conducting a preliminary investigation, the Ombudsman was supposed to be guided only by the evidence before him, it was a grave abuse of discretion for him to dismiss such complaint without receipt of any evidence contradicting that of complainants.[6]

Moreover, the Ombudsman, argued petitioners, gravely abused his discretion when he approved of the conclusion that a writ of demolition was not needed in demolishing the improvements made by petitioners upon the subject property. The Ombudsman agreed with the investigating officer that the right to demolish was a privilege granted to respondents by virtue of the writ of possession.[7]

Petitioners prayed that this Court issue a writ of mandamus ordering the Ombudsman to require its co-respondents to file their counter-affidavits and comply with Sections 3(c), (d), (e) and (f) of Rule 112 of the Revised Rules on Criminal Procedure.[8]

Petitioners' arguments are not impressed with merit.

Administrative Order No. 07 of the Office of the Ombudsman, otherwise known as "the Rules of Procedure of the Office of the Ombudsman," specifically Section 2 of Rule II, states:

"SEC. 2. Evaluation. - Upon evaluating the complaint, the investigating officer shall recommend whether it may be:

- a) dismissed outright for want of palpable merit;
- b) referred to respondent for comment;
- c) indorsed to the proper government office of agency which has jurisdiction over the case;
- d) forwarded to the appropriate officer or official for fact-finding investigation;
- e) referred for administrative adjudication; or
- f) subjected to a preliminary investigation."

From the above-mentioned provision, it could be seen that the Ombudsman does not necessarily have to conduct a preliminary investigation upon receipt of a complaint. Should the investigating officer find the complaint utterly devoid of merit, then he may recommend its outright dismissal. Moreover, it is also within his discretion to determine whether or not a preliminary investigation should be conducted.

This rule is even buttressed and finds support in the Rules of Court, specifically Section 3(b) of Rule 112 of the

Revised Rules on Criminal Procedure, which states:

“SEC.3. Procedure. - Except as provided for in Section 7 hereof, no complaint or information for an offense cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted in the following manner:

xxx xxx xxx xxx

(b) Within ten (10) days after the filing of the complaint, the investigating officer shall either dismiss the same if he finds no ground to continue with the inquiry, or issue a subpoena to the respondent, attaching thereto a copy of the complaint, affidavits and other supporting documents. Within ten (10) days from receipt thereof, the respondent shall submit counter-affidavits and other supporting documents. He shall have the right to examine all other evidence submitted by the complainant.”

Thus, in the case at bar, the investigating officer, Ramon Godinez, was not acting without any legal basis for he was indeed clothed with the authority to recommend the dismissal of the complaint without going through a preliminary investigation.

This Court can not grant the relief sought by petitioners for the duty sought to be compelled is discretionary in nature.

Mandamus lies to compel the performance, when refused, of a ministerial duty, but not to compel the performance of a discretionary duty.[9] It will not issue to control or review the exercise of discretion of a public officer where the law imposes upon said public officer the right and duty to exercise his judgment in reference to any matter in which he is required to act. It is his judgment that is to be exercised and not that of the court.[10]

Petitioners also argue that this case would fall under the exception to the rule that the writ will not issue to control the discretion of the tribunal board or officer since there was a clear showing of grave abuse of discretion. This discretion which will stand review by mandamus, must be exercised under the law and not contrary to law. If in the attempted performance of a discretionary act, the official abuses his discretion, so as to amount to a failure to do the acts as the law requires, or if by a mistaken view of the law, there has in fact been no actual exercise in good faith of the judgment or discretion vested in the officer, mandamus is a proper remedy.[11]

Petitioners claim that this grave abuse of discretion was evident when the public respondent concluded that: 1) they no longer had any colorable title to the properties as the property was made the object of expropriation proceedings and their claim of ownership had long been foreclosed by judicial action, and 2) the respondents were clothed with the proper judicial armor in causing the demolition.

With regard to the first conclusion, it is of judicial notice that in the case of *Republic of the Philippines v. Cristina de Knecht and Court of Appeals*,^[12] this Court had already made an adjudication on the status of the property when it upheld the validity of *Batas Pambansa Blg. 340*, which expropriated the property in question. Furthermore, the issue of ownership over the expropriated land had already been laid to rest with finality when this Court, in a resolution dated November 20, 1989, denied petitioners' Petition for Review in G.R. No. 89862, entitled “*Cristina de Knecht and Rene Knecht v. Court of Appeals, et. al.*,”. The motion for reconsideration of this resolution was denied with finality in another resolution dated January 17, 1990.^[13]

Anent the second conclusion, respondents were indeed clothed with the proper judicial armor. A writ of demolition was no longer necessary since B.P. 340 itself gave the power of demolition to the agency or instrumentality of the government in charge of the expropriation. Section 4 of *Batas Pambansa 340*, which expropriated specified parcels of land located along F. Rein-Del Pan streets from Taft Avenue to Roxas Blvd. in the City of Pasay, states:

“SEC. 4. The just compensation for the expropriated properties shall be determined by the court based on their fair market value, after considering all the facts which make them commercially valuable.

“Upon the expropriation of said parcels of land, the Government shall deposit at the Philippine National Bank at its main office or any of its branches an amount as may be determined by the court, the Government or its authorized instrumentality, agency or entity shall be entitled to immediate possession and disposition of the property and improvements thereon including the power of demolition if necessary.”

Hence, the writ of possession, which was properly issued, also gave the respondents the power of demolition in accordance with the aforecited provision.

Whether or not the evidence of guilt was strong should be left to the determination of the Ombudsman who took into account the evidence before him.[14] It was discretionary upon him if he would rely mainly on the findings of fact of the investigating prosecutor in making a review of the latter’s report and recommendation.[15] This Court will not interfere with the Ombudsman’s exercise of his investigatory and prosecutory powers.

In closing, it is apt to take heed of this Court’s ruling in the case of Dr. Ramon Y. Alba v. The Honorable Deputy Ombudsman, Cesar Y. Nitorreda, et. al.,[16] wherein it was said that:

“... this Court has consistently refrained from interfering with the exercise by the Ombudsman of his constitutionally mandated investigatory and prosecutory powers. Otherwise stated, it is beyond the ambit of this Court to review the exercise of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.”

WHEREFORE, the Petition for the issuance of the Writ of Mandamus is hereby DISMISSED.

SO ORDERED.

Regalado (Chairman), Melo, Puno, and Mendoza, JJ., concur.

[1] Cf. Annex "C" to Petition, Rollo, pp.48-67.

[2] Annex "5" to Comment, Rollo, pp.147-148.

[3] Rollo, p.26; Annex “A”, Petition.

[4] Annex “B” to Petition, Rollo, pp. 35-36.

[5] Annex "C-1" to the Petition, Rollo, p.68-71.

[6] Petition, Rollo, pp.6-22.

[7] Ibid.

[8] The above-mentioned provisions state:

“(c) Such counter-affidavits and other supporting evidence submitted by the respondent shall also be sworn to and certified as prescribed in paragraph (a) hereof and copies thereof shall be furnished by him to the complainant.

(d) If the respondent cannot be subpoenaed, or if subpoenaed, does not submit counter-affidavits within the ten (10) day period, the investigating officer shall base his resolution on the evidence presented by the complainant.

(e) If the investigating officer believes that there are matters to be clarified, he may set a hearing to propound clarificatory questions to the parties or their witnesses, during which the parties shall be afforded an opportunity to be present but without the right to examine or cross-examine. If the parties so desire, they may submit questions to the investigating officer which the latter may propound to the parties or witnesses concerned.

(f) Thereafter, the investigation shall be deemed concluded, and the investigating officer shall resolve the case within ten (10) days therefrom. Upon the evidence thus adduced, the investigating officer shall determine whether or not there is sufficient ground to hold the respondent for trial. (14a)”

[9] Sps. Camilo and Delia Go v. Court of Appeals, Hon. Marcelino Bautista, et. al. G.R. No. 120040, January 29, 1996 [252 SCRA 564]

[10] Arleo E. Magtibay v. Lt. Col. Santiago Garcia, et. al., G.R. No. L-29871, January 28, 1983 [120 SCRA 370]; Avenue Arrastre and Stevedoring Corp., Inc.v. The Hon. Commissioner of Customs, et. al., G.R. No. L-44674, February 28, 1983 [120 SCRA 878]

[11] Cornelio Antiquera v. Hon. Sotero Baluyot, et. al. G.R. No. L-3318, May 5, 1952 [91 Phil 213]

[12] G. R. No. 87335, February 12, 1990 [182 SCRA 142]

[13] Cf. Annex "3" to Comment, Rollo, pp.136-138.

[14] Gloria G. Lastimosa v. Hon. Ombudsman Conrado Vasquez, et. al., G.R. No. 116801, April 6, 1995 [243 SCRA 497].

[15] Roman A.Cruz, Jr. v. People, et. al. G.R. No. 110436, June 27, 1994 [233 SCRA 439]

[16] G.R. No. 120223, March 13, 1996 [254 SCRA 753]

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