

AMELIA CABRERA, PETITIONER, VS. MANUEL LAPID, FERNANDO BALTAZAR, REYNALDO F. CABRERA AND DIONY VENTURA, RESPONDENTS.*G.R. NO. 129098. December 06, 2006*

Ponente: TINGA, J.

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The instant petition for review on certiorari seeks the reversal of the Resolution[1] dated 13 May 1996 and the Order[2] dated 21 March 1997, both issued by the Office of the Ombudsman. The Resolution dismissed the complaint-affidavit filed by petitioner against respondents and the Order denied her motion for reconsideration.

The instant petition originated from a Complaint-Affidavit[3] filed in November 1995 by petitioner Amelia M. Cabrera with the Office of the Ombudsman ("Ombudsman"). Named respondents were Manuel Lapid, Fernando Baltazar, Reynaldo F. Cabrera and Superintendent Diony Ventura, respectively, in their capacities as Governor of Pampanga, Mayor of Sasmuan, Pampanga, Vice-Mayor of Sasmuan, Pampanga and Superintendent of the Philippine National Police (PNP)-Region 3, Pampanga. In her three(3)-page affidavit, petitioner accused respondents of violating Section 3(e) of the Anti-Graft and Corrupt Practices Act and Article 324 of the Revised Penal Code.

In her Complaint-Affidavit, petitioner stated that she entered into a lease agreement with the Municipality of Sasmuan over a tract of land for the purpose of devoting it to fishpond operations. According to petitioner, she had spent approximately P5,000,000.00 for its construction before the fishpond operations commenced in August 1995. A month later, petitioner learned from newspaper reports of the impending demolition of her fishpond as it was purportedly illegal and blocked the flow of the Pasak River. Thus, petitioner sent the fishpond administrator to dissuade respondents from destroying her property.[4]

Despite pleas from petitioner, respondents ordered the destruction of petitioner's fishpond. The property was demolished on 10 October 1995 by dynamite blasting. Petitioner alleged that the demolition was purposely carried out in the presence of media representatives and other government officials to gain media mileage. Petitioner imputed evident bad faith on respondents Mayor Baltazar and Vice-Mayor Cabrera in allowing the destruction of the fishpond despite their prior knowledge of the existence of the lease agreement. She also charged respondents Governor Lapid and Senior Superintendent Ventura with gross inexcusable negligence for ordering the destruction of the fishpond without first verifying its legality.[5]

At the preliminary investigation, respondents, except Senior Superintendent Ventura, submitted counter-affidavits, denying the accusations against them. In the counter-affidavit jointly filed by Mayor Baltazar and Vice-Mayor Cabrera, they insisted that contrary to petitioner's claim, the fishpond was an illegal structure because it was erected on the seashore, at the mouth of the Pasak River, and sat on an inalienable land. They claimed that the demolition was done by the Task Force Bilis Daloy upon the directive of then President Fidel V. Ramos.[6]

In his Counter-Affidavit,[7] Governor Lapid averred that the contract of lease between petitioner and the Municipality of Sasmuan, represented by then Mayor Abelardo Panlaqui, was executed two weeks before respondent Mayor Baltazar took his oath of office in 1995. Governor Lapid also argued that under the law, the Department of Agriculture (DA) is the government agency authorized to enter into licensing agreements for fishpond operations, and as per certification by the DA Regional Director, petitioner's fishpond operation was not covered by a fishpond lease agreement or application. Governor Lapid also referred to the certification by the Municipal Health Officer of Sasmuan issued before the actual demolition of the fishpond, describing it as a nuisance per se and recommending its abatement.[8]

On 13 May 1996, the Ombudsman issued the assailed Resolution, dismissing petitioner's complaint. The dismissal was based on the declaration that the fishpond was a nuisance per se and, thus, may be abated by respondents in the exercise of the police power of the State.[9]

Petitioner sought reconsideration of the Resolution, arguing that under Sec. 149 of Republic Act (R.A.) No. 7160, otherwise known as the Local Government Code of 1991, the exclusive authority to grant fishery privileges is vested in the municipalities. Petitioner also questioned the certification by the Municipal Health Officer, alleging that the same was issued before the ocular inspection of the property which took place only on the day of the demolition. Petitioner also contended that a judicial proceeding was necessary to determine whether the property indeed had caused the flooding.[10] Respondents filed separate oppositions to petitioner's motion for reconsideration.[11] Petitioner filed a reply to the opposition[12] and respondent Governor Lapid filed a rejoinder to the reply.[13]

In the Order dated 21 March 1997, the Ombudsman affirmed its 13 May 1996 Resolution. It ruled that the repealing clause of R.A. No. 7160 expressly repealed only Sec. 2, 6 and 29 of Presidential Decree (P.D.) No. 704 so that in harmonizing the remaining provisions of P.D. No. 704 and the provisions of R.A. No. 7160 applicable to the grant of fishery privileges, the Bureau of Fisheries and Aquatic Resources (BFAR) is the government agency authorized to grant fishpond license or permit in areas not identified as municipal waters or not declared as alienable or disposable by the Department of Environment and Natural Resources (DENR). Since it appears from DENR records that the subject property has not been declared disposable or included in areas devoted for fishpond development, the Ombudsman concluded that the lease agreement entered into by petitioner was void ab initio. In view of the illegality of the lease agreement, the Ombudsman ruled that its demolition was justified. The Ombudsman described the demolition as a valid exercise of police power and in accordance with the provision of Sec. 28 of P.D. No. 704 directing the removal of any fishpen or fishpond that obstructed the free navigation of a stream or lake. It also upheld the authority of the district health officer to determine the abatement of a nuisance without need of judicial proceedings.[14]

Petitioner elevated the matter to this Court via a petition for review on certiorari under Rule 45 of the Rules of Court to assail the 13 May 1996 Resolution and 21 March 1997 Order of the Ombudsman. Petitioner subsequently filed an amended petition for review on certiorari to implead the Ombudsman as respondent, although in a petition for review on certiorari, the tribunal whose issuance is assailed need not be impleaded as respondent.

The petition imputes the following errors on the Ombudsman:

I.

THE OFFICE OF THE OMBUDSMAN ERRED AND EXCEEDED ITS AUTHORITY IN RULING THAT THE LEASE CONTRACT BETWEEN THE MUNICIPALITY OF SASMUAN AND PETITIONER IS NULL AND VOID.

II.

THE OFFICE OF THE OMBUDSMAN ERRED IN RULING THAT THE DEMOLITION OF THE FISHPOND WAS VALIDLY MADE BY VIRTUE OF THE DECLARATION BY THE HEALTH OFFICER THAT IT WAS A NUISANCE PER SE.

III.

THE OFFICE OF THE OMBUDSMAN ERRED IN RULING THAT THE DEMOLITION IS PART OF THE PROPER EXERCISE OF THE POLICE POWER OF THE STATE.

IV.

THE OFFICE OF THE OMBUDSMAN ERRED IN RULING THAT PETITIONER WAS GIVEN DUE NOTICE AND HEARING BEFORE THE FISHPOND WAS BLASTED.

V.

THE OFFICE OF THE OMBUDSMAN ERRED IN RULING THAT PROBABLE CAUSE DOES NOT EXIST TO INDICT RESPONDENTS FOR VIOLATION OF THE SUBJECT OFFENSES.[15]

Clearly, this is an appeal from the questioned issuances of the Ombudsman. However, such direct resort to this Court from a resolution or order of the Ombudsman is not sanctioned by any rule of procedure.

Neither can petitioner avail of Sec. 27[16] of R.A. No. 6770, otherwise known as The Ombudsman Act of 1989. The provision allowed direct appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court. The right to appeal is granted only in respect to orders or decisions of the Ombudsman in administrative cases.[17] The provision does not cover resolutions of the Ombudsman in criminal cases. More importantly, Sec. 27 of R.A. No. 6770 insofar as it allowed a direct appeal to this Court was declared unconstitutional in *Fabian v. Hon. Desierto*.[18]

However, an aggrieved party in criminal actions is not without any recourse. Where grave abuse of discretion amounting to lack or excess of jurisdiction taints the findings of the Ombudsman on the existence of probable cause, the aggrieved party may file a petition for certiorari under Rule 65.[19] The remedy from resolutions of the Ombudsman in preliminary investigations of criminal cases is a petition for certiorari under Rule 65, not a petition for review on certiorari under Rule 45.[20]

But in this case, petitioner has taken the position that the Ombudsman has decided questions of substance contrary to law and the applicable decisions of the Supreme Court. That is a ground under a Rule 45 petition. Indeed, from a reading of the assignment of errors, it is clear that petitioner does not impute grave abuse of discretion to the Ombudsman in issuing the assailed Resolution and Order. Rather, she merely questions his findings and conclusions. As stated earlier, direct appeal to the Supreme Court via a petition for review on certiorari is not sanctioned by any rule of procedure. By availing of a wrong remedy, the petition should be dismissed outright.

Even if the Court treats the instant appeal as a petition for certiorari under Rule 65, its dismissal is nevertheless warranted because petitioner failed to present, much more substantiate, any grave abuse of discretion on the part of the Ombudsman.

A careful reading of the questioned Resolution reveals that the Ombudsman dismissed petitioner's criminal complaint because respondents had validly resorted to the police power of the State when they effected the demolition of the illegal fishpond in question following the declaration thereof as a nuisance per se. Thus, the Ombudsman was of the opinion that no violation of Section 3(e)[21] of the Anti-Graft and Corrupt Practices Act or of Article 324[22] of the Revised Penal Code was committed by respondents. In the words of the Ombudsman, "those who participated in the blasting of the subject fishpond were only impelled by their desire to serve the best

interest of the general public; for the good and the highest good." [23]

By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. [24]

Grave abuse of discretion should be differentiated from an error in judgment. An error of judgment is one which the court may commit in the exercise of its jurisdiction, and which error is reversible only by an appeal. As long as the court acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment, correctible by an appeal or a petition for review under Rule 45 of the Rules of Court. An error of jurisdiction is one where the act complained of was issued by the court without or in excess of jurisdiction and which error is correctible only by the extraordinary writ of certiorari. [25]

The other errors raised by petitioner pertain to the Ombudsman's opinion on the lack of probable cause to indict respondents. These are purported errors in judgment which can be corrected by an appeal, although not via a direct appeal to this Court. Direct resort to this Court may be had only through the extraordinary writ of certiorari and upon showing that the Ombudsman committed grave abuse of discretion, which petitioner failed to demonstrate.

Absent any grave abuse of discretion tainting it, the courts will not interfere with the Ombudsman's supervision and control over the preliminary investigation conducted by him. [26] It is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it. [27] The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they would be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant. [28]

WHEREFORE, the instant petition for review on certiorari is DENIED. No costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 22-26.

[2] Id. at 27-35; 125-138; Likewise dated 5 March 1997.

[3] Id. at 36-38.

[4] Id. at 36-37.

[5] Id. at 37.

[6] Id. at 45-47.

[7] Id. at 48-50.

[8] Id. at 48-49.

[9] Id. at 22.

[10] Id. at 76.

[11] Id. at 85-90, 91-95.

[12] Id. at 96-100.

[13] Id. at 101-103.

[14] Supra note 2.

[15] Rollo, pp. 113-114.

[16] R.A.No. 6770 (1989), Sect. 27 provides: Effectivity and Finality of Decisions.–(1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

(1) New evidence has been discovered which materially affects the order, directive or decision;

(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: Provided, That only one motion for reconsideration shall be entertained.

Findings of fact by the Officer 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.

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.

[17] Kara-an v. Office of the Ombudsman, G.R. No. 119990, June 21, 2004, 432 SCRA 457, 463-464.

[18] 356 Phil. 787 (1998).

[19] Kara-an v. Office of the Ombudsman, supra at 464.

[20] Id. at 462-463.

[21] Republic Act No. 3019 (1960), Sec. 3(e) provides:

SEC. 3. Corrupt practices of public officials.–

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other

concessions.

[22] REVISED PENAL CODE, Art. 324. Crimes involving destruction.—Any person who shall cause destruction by means of explosion, discharge of electric current, inundation, sinking or stranding of a vessel, intentional damaging of the engine of said vessel, taking up the rails from a railway track, maliciously changing railway signals for the safety of moving trains, destroying telegraph wires and telegraph posts, or those of any other system, and, in general, by using any other agency or means of destruction as effective as those above enumerated, shall be punished by reclusion temporal if the commission has endangered the safety of any person; otherwise, the penalty of prision mayor shall be imposed.

[23] Rollo, p. 25.

[24] Solvic Industrial Corporation. v. NLRC, 357 Phil. 430, 438 (1998).

[25] Corpuz v. Sandiganbayan, G.R. No. 162214, November 11, 2004, 442 SCRA 294, 307-308.

[26] Mamburao, Inc. v. Office of the Ombudsman, G.R. Nos.139141-42, November 15, 2000, 344 SCRA 805, 817-818

[27] Id. at 819.

[28] Id.

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