

PETER C. CHUA LAO, PETITIONER, VS. ALFREDO N. MACAPUGAY, IN HIS CAPACITY AS QUEZON CITY BUILDING OFFICIAL, ALFREDO D. ZAMORA, JR., IN HIS CAPACITY AS QUEZON CITY ASSISTANT BUILD...

G.R. No. 132893. August 13, 1999

Ponente: PARDO, J.

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PARDO, J.:

This petition for certiorari assails the resolution[1] of the Ombudsman dismissing the charges leveled by petitioner Peter Chua Lao against respondents building official, the assistant building official, the Quezon City Legal Officer, the Chief, Enforcement Division, and respondent-spouses Venancio Tay and Paulina Tay, as well as the resolution[2] denying reconsideration of the dismissal, on the ground that there was no showing that the questioned acts of respondents public officials were motivated by bad faith and thus, there was no probable cause to file a criminal case against them.

The facts are as follows:

Petitioner is the owner of RC Building, located at the corner of Tolentino Street and Del Monte Avenue, Quezon City. Adjacent to this building is the property of private respondents.

On September 23, 1994, the Office of the Building Official (OBO) of Quezon City issued a building permit to private respondents for the construction of a 4 storey commercial building with a roof deck on their property adjacent to petitioner's building. While construction was under way, private respondents found out that the 5[th] and 6[th] floors of petitioner's building encroached on their property by .40 centimeters.

On April 5, 1995, private respondents filed with the OBO a complaint against the petitioner for illegal encroachment, docketed as OBO Case No. 95-35.

In turn, on August 14, 1995, petitioner filed with the same office a complaint[3] for revocation of private respondent's building permit, docketed as OBO Case No. 95-35-A.

On June 26, 1995, respondent Alfredo N. Macapugay, the City Engineer, issued a resolution[4] in OBO Case No. 95-35 ordering petitioner to undertake the necessary adjustment to rectify the encroachment on private respondents' property. Petitioner's motion for reconsideration[5] was denied in a resolution dated August 22, 1995[6] signed by respondent Macapugay and the other public respondents, viz: Francisco M. Itliong (Chief, Enforcement Division), Atty. Jose L.R. Reyes (Legal Officer III) and Alfredo D. Zamora (Accounting Assistant Building Official).

Thereafter, petitioner appealed to the Department of Public Works and Highways. During the pendency of the appeal, petitioner filed a criminal complaint[7] before the Office of the Ombudsman charging the respondents with violation of Sections 3 (e & j) and 4 (b) of Republic Act No. 3019, as amended, and Articles 171 (2), 204,

206 and 207 of the Revised Penal Code.

On April 2, 1997, the Department of Public Works and Highways issued a resolution disposing of petitioner's appeal in his favor. The decretal portion of the resolution decrees:

"1.

The OBO's decision insofar as Appellee's complaint against appellant for alleged illegal encroachment on the portion of the area which the former claims to be part of her property is hereby declared null and void for lack of jurisdiction;

"2.

The OBO is advised to initiate a motu proprio investigation on both appellant and appellee's buildings for violation of the provisions of the NBC for extending the construction of their buildings up to sixth (sic) floors without approved permits; and

"3.

The order of the OBO dated March 11, 1996 denying Appellant's Motion for Reconsideration of its Resolution dated June 26, 1995 is hereby declared null and void, the OBO having lost jurisdiction already over the case by virtue of appellant's appeal to us. Consequently, all subsequent orders/issuances of the said office relative to the case are also declared without force and effect."[8]

On November 21, 1997, the Ombudsman issued the assailed resolution dismissing the charges filed by petitioner against respondents, for lack of probable cause. The Ombudsman denied petitioner's motion for reconsideration of the resolution in an order dated February 16, 1998.

Hence, this petition.

In private respondents' Comment[9] to the petition filed on April 5, 1999, they bring to the Court's attention a Compromise Agreement[10] dated June 22, 1998, executed by petitioner and private respondents whereby they mutually agreed to settle amicably their dispute and to cause the dismissal of all pending cases filed by one party against the other by filing a joint motion to dismiss. They filed the Compromise Agreement with the Regional Trial Court, Quezon City, on June 23, 1998.

"A compromise is a bilateral act or transaction that is expressly acknowledged as a juridical agreement by the Civil Code."[11] Thus, Article 2028 of the Civil Code provides that:

"A compromise is a contract whereby the parties by making reciprocal concessions, avoid a litigation or put an end to one already commenced."

"The Civil Code not only defines and authorizes compromises, it in fact encourages them in civil actions."[12] "Compromises are generally to be favored and cannot be set aside if the parties acted in good faith and made reciprocal concessions to each other in order to terminate a case."[13]

However, the compromise agreement cannot affect the charges of violation of R.A. 3019, Section 3 (e) and (j), and Section 4 (b); Revised Penal Code, Articles 171 and 172, par. 2, Articles 206 and 207, filed against respondents. The law abhors settlement of criminal liability. Nonetheless, we agree with the Ombudsman that there was no "probable cause" as the act complained of, that respondent building officials' approval of a building

permit in favor of private respondents, despite alleged patent errors in the plan and specifications, constitutes error of judgment,[14] not necessarily a violation of the anti-graft law, or the Revised Penal Code.

WHEREFORE, the Court hereby DISMISSES the petition, for lack of merit.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] Rollo, annex "C", pp. 147-150.

[2] Rollo, Annex "D", pp. 152-154.

[3] Rollo, pp. 117-126.

[4] Rollo, pp. 63-64.

[5] Rollo, pp. 65-67.

[6] Rollo, p. 81.

[7] Rollo, pp. 21-52.

[8] Resolution, DPWH, Exh. V, Rollo, pp. 143-146, at p. 146.

[9] Rollo, pp. 189-195.

[10] Rollo, Annex "A" of Private Respondents' Comment, pp. 192-195.

[11] Galay vs. Court of Appeals, 250 SCRA 629, 635 [1996].

[12] Osmeña vs. Commission on Audit, 238 SCRA 463,470 [1994].

[13] Amarante vs. Court of Appeals, 232 SCRA 104, 108 [1994].

[14] See Comment of public respondents, Rollo, pp. 171-178, at p. 175.

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