ANIANO A. ALBON, PETITIONER,VS. BAYANI F. FERNANDO, CITY MAYOR OF MARIKINA, ENGR. ALFONSO ESPIRITO, CITY ENGINEER OF MARIKINA, ENGR. ANAKI MADERAL, ASSISTANT CITY ENGINEER OF MA...

G.R. NO. 148357. June 30, 2006

Ponente: CORONA, J.

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CORONA, J.:

May a local government unit (LGU) validly use public funds to undertake the widening, repair and improvement of the sidewalks of a privately-owned subdivision?

This is the issue presented for the Court's resolution in this petition for review on certiorari[1] which assails the December 22, 2000 decision[2] and May 30, 2001 resolution of the Court of Appeals in CA-G.R. SP No. 56767.

In May 1999, the City of Marikina undertook a public works project to widen, clear and repair the existing sidewalks of Marikina Greenheights Subdivision. It was undertaken by the city government pursuant to Ordinance No. 59, s. 1993[3] like other infrastructure projects relating to roads, streets and sidewalks previously undertaken by the city.

On June 14, 1999, petitioner Aniano A. Albon filed with the Regional Trial Court of Marikina, Branch 73, a taxpayer's suit for certiorari, prohibition and injunction with damages against respondents (who were at that time officials of Marikina), namely, City Mayor Bayani F. Fernando, City Engineer Alfonso Espirito, Assistant City Engineer Anaki Maderal and City Treasurer Natividad Cabalquinto. It was docketed as SCA Case No. 99-331-MK.

Petitioner claimed that it was unconstitutional and unlawful for respondents to use government equipment and property, and to disburse public funds, of the City of Marikina for the grading, widening, clearing, repair and maintenance of the existing sidewalks of Marikina Greenheights Subdivision. He alleged that the sidewalks were private property because Marikina Greenheights Subdivision was owned by V.V. Soliven, Inc. Hence, the city government could not use public resources on them. In undertaking the project, therefore, respondents allegedly violated the constitutional proscription against the use of public funds for private purposes[4] as well as Sections 335 and 336 of RA 7160[5] and the Anti-Graft and Corrupt Practices Act. Petitioner further alleged that there was no appropriation for the project.

On June 22, 1999, the trial court denied petitioner's application for a temporary restraining order (TRO) and writ of preliminary injunction. The trial court reasoned that the questioned undertaking was covered by PD 1818 and Supreme Court Circular No. 68-94 which prohibited courts from issuing a TRO or injunction in any case, dispute or controversy involving an infrastructure project of the government.

On November 15, 1999, the trial court rendered its decision[6] dismissing the petition. It ruled that the City of Marikina was authorized to carry out the contested undertaking pursuant to its inherent police power. Invoking

this Court's 1991 decision in White Plains Association v. Legaspi,[7] the roads and sidewalks inside the Marikina Greenheights Subdivision were deemed public property.

Petitioner sought a reconsideration of the trial court's decision but it was denied.

Thereafter, petitioner elevated the case to the Court of Appeals via a petition for certiorari, prohibition, injunction and damages. On December 22, 2000, the appellate court sustained the ruling of the trial court and held that Ordinance No. 59, s. 1993, was a valid enactment. The sidewalks of Marikina Greenheights Subdivision were public in nature and ownership thereof belonged to the City of Marikina or the Republic of the Philippines following the 1991 White Plains Association decision. Thus, the improvement and widening of the sidewalks pursuant to Ordinance No. 59, s. 1993 was well within the LGU's powers. On these grounds, the petition was dismissed.

Petitioner moved for reconsideration of the appellate court's decision but it was denied. Undaunted, he instituted this petition.

Like all LGUs, the City of Marikina is empowered to enact ordinances for the purposes set forth in the Local Government Code (RA 7160). It is expressly vested with police powers delegated to LGUs under the general welfare clause of RA 7160.[8] With this power, LGUs may prescribe reasonable regulations to protect the lives, health, and property of their constituents and maintain peace and order within their respective territorial jurisdictions.[9]

Cities and municipalities also have the power to exercise such powers and discharge such functions and responsibilities as may be necessary, appropriate or incidental to efficient and effective provisions of the basic services and facilities, including infrastructure facilities intended primarily to service the needs of their residents and which are financed by their own funds.[10] These infrastructure facilities include municipal or city roads and bridges and similar facilities.[11]

There is no question about the public nature and use of the sidewalks in the Marikina Greenheights Subdivision. One of the "whereas clauses" of PD 1216[12] (which amended PD 957[13]) declares that open spaces,[14] roads, alleys and sidewalks in a residential subdivision are for public use and beyond the commerce of man. In conjunction herewith, PD 957, as amended by PD 1216, mandates subdivision owners to set aside open spaces which shall be devoted exclusively for the use of the general public.

Thus, the trial and appellate courts were correct in upholding the validity of Ordinance No. 59, s. 1993. It was enacted in the exercise of the City of Marikina's police powers to regulate the use of sidewalks. However, both the trial and appellate courts erred when they invoked our 1991 decision in White Plains Association and automatically applied it in this case.

This Court has already resolved three interrelated White Plains Association cases:[15] (1) G.R. No. 55685[16] resolved in 1985; (2) G.R. No. 95522[17] decided in 1991 and (3) G.R. No. 128131[18] decided in 1998.

The ruling in the 1991 White Plains Association decision relied on by both the trial and appellate courts was modified by this Court in 1998 in White Plains Association v. Court of Appeals.[19] Citing Young v. City of Manila,[20] this Court held in its 1998 decision that subdivision streets belonged to the owner until donated to the government or until expropriated upon payment of just compensation.

The word "street," in its correct and ordinary usage, includes not only the roadway used for carriages and vehicular traffic generally but also the portion used for pedestrian travel.[21] The part of the street set aside for the use of pedestrians is known as a sidewalk.[22]

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Moreover, under subdivision laws,[23] lots allotted by subdivision developers as road lots include roads, sidewalks, alleys and planting strips.[24] Thus, what is true for subdivision roads or streets applies to subdivision sidewalks as well. Ownership of the sidewalks in a private subdivision belongs to the subdivision owner/developer until it is either transferred to the government by way of donation or acquired by the government through expropriation.

Section 335 of RA 7160 is clear and specific that no public money or property shall be appropriated or applied for private purposes. This is in consonance with the fundamental principle in local fiscal administration that local government funds and monies shall be spent solely for public purposes.[25]

In Pascual v. Secretary of Public Works,[26] the Court laid down the test of validity of a public expenditure: it is the essential character of the direct object of the expenditure which must determine its validity and not the magnitude of the interests to be affected nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion.[27] Incidental advantage to the public or to the State resulting from the promotion of private interests and the prosperity of private enterprises or business does not justify their aid by the use of public money.[28]

In Pascual, the validity of RA 920 ("An Act Appropriating Funds for Public Works") which appropriated P85,000 for the construction, repair, extension and improvement of feeder roads within a privately-owned subdivision was questioned. The Court held that where the land on which the projected feeder roads were to be constructed belonged to a private person, an appropriation made by Congress for that purpose was null and void.[29]

In Young v. City of Manila,[30] the City of Manila undertook the filling of low-lying streets of the Antipolo Subdivision, a privately-owned subdivision. The Court ruled that as long as the private owner retained title and ownership of the subdivision, he was under the obligation to reimburse to the city government the expenses incurred in land-filling the streets.

Moreover, the implementing rules of PD 957, as amended by PD 1216, provide that it is the registered owner or developer of a subdivision who has the responsibility for the maintenance, repair and improvement of road lots and open spaces of the subdivision prior to their donation to the concerned LGU. The owner or developer shall be deemed relieved of the responsibility of maintaining the road lots and open space only upon securing a certificate of completion and executing a deed of donation of these road lots and open spaces to the LGU.[31]

Therefore, the use of LGU funds for the widening and improvement of privately-owned sidewalks is unlawful as it directly contravenes Section 335 of RA 7160. This conclusion finds further support from the language of Section 17 of RA 7160 which mandates LGUs to efficiently and effectively provide basic services and facilities. The law speaks of infrastructure facilities intended primarily to service the needs of the residents of the LGU and "which are funded out of municipal funds."[32] It particularly refers to "municipal roads and bridges" and "similar facilities."[33]

Applying the rules of ejusdem generis, the phrase "similar facilities" refers to or includes infrastructure facilities like sidewalks owned by the LGU. Thus, RA 7160 contemplates that only the construction, improvement, repair and maintenance of infrastructure facilities owned by the LGU may be bankrolled with local government funds.

Clearly, the question of ownership of the open spaces (including the sidewalks) in Marikina Greenheights Subdivision is material to the determination of the validity of the challenged appropriation and disbursement made by the City of Marikina. Similarly significant is the character of the direct object of the expenditure, that is, the sidewalks.

Whether V.V. Soliven, Inc. has retained ownership of the open spaces and sidewalks or has already donated them

to the City of Marikina, and whether the public has full and unimpeded access to the roads and sidewalks of Marikina Greenheights Subdivision, are factual matters. There is a need for the prior resolution of these issues before the validity of the challenged appropriation and expenditure can be determined.

WHEREFORE, this case is hereby ordered REMANDED to the Regional Trial Court of Marikina City for the reception of evidence to determine (1) whether V.V. Soliven, Inc. has retained ownership of the open spaces and sidewalks of Marikina Greenheights Subdivision or has donated them to the City of Marikina and (2) whether the public has full and unimpeded access to, and use of, the roads and sidewalks of the subdivision. The Marikina City Regional Trial Court is directed to decide the case with dispatch.

SO ORDERED.

Puno, Acting C.J., (Chairperson), Azcuna and Garcia, JJ., concur.
Sandoval-Gutierrez, J., on official business.

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[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Ramon A. Barcelona and concurred in by Associate Justices Rodrigo V. Cosico and Bienvenido L. Reyes of the Tenth Division of the Court of Appeals; rollo, pp. 44-51.

[3] Otherwise known as "An Ordinance Regulating the Use of the Streets and Sidewalks in the Municipality of Marikina."

[4] CONSTITUTION, Article VI, Sec. 9.

[5] Otherwise known as the "Local Government Code of 1991."

[6] Penned by Judge Olga Palanca Enriquez.

[7] G.R. No. 95522, 07 February 1991, 193 SCRA 765. In particular, the Court of Appeals invoked the following statement in the 1991 White Plains Association decision:

> When [a strip of land] was withdrawn from the commerce of man as the open space required by law to be devoted for the use of the general public, its ownership was automatically vested in the [LGU] and/or the Republic of the Philippines, without need of paying any compensation to [the developer], although it is still registered in the latterï¿½s name. Its donation by the owner/developer is a mere formality.

[8] SEC. 61. General Welfare. – Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for the efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

[9] Batangas CATV, Inc. v. Court of Appeals, G.R. No. 138810, 29 September 2004, 439 SCRA 326.

[10] RA 7160, Section 17.

[11] Id., paragraphs (b)(2)(viii) and (b)(4).

[12] Defining "Open Space" in Residential Subdivisions and Amending Section 31 of PD 957 Requiring Subdivision Owners to Provide Roads, Alleys, Sidewalks and Reserve Open Space for Parks or Recreational Use.

[13] Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof.

[14] Open space shall mean an area reserved exclusively for parks, playgrounds, recreational uses, and other similar facilities and amenities. (Section 4[c], Rule III, HSRC Administrative Order No. 82-01, also known as the "Rules and Regulations Implementing Sec. 31 of PD 957, as amended by PD 1216.")

[15] All three cases relate to Road Lot 1 or the proposed portion of Katipunan Avenue supposed to pass through the White Plains Subdivision.

[16] White Plains Association v. Court of Appeals and Quezon City Development Corporation. In its resolution dated November 14, 1985, the Court en banc dismissed the petition. The Court ruled that Road Lot 1 was withdrawn from the commerce of man and should be developed for the use of the general public.

[17] White Plains Association, Inc. v. Legaspi, Quezon City Development Corporation, et al., supra at note 7. The Court reiterated the doctrine that Road Lot 1 had been withdrawn from the commerce of man, thus constituting it as part of mandatory open space reserved for public use.

[18] White Plains Association v. Court of Appeals, 08 October 1998, 297 SCRA 547.

[19] Id.

[20] 73 Phil. 537 (1941).

[21] Government of the Philippine Islands v. Derham Brothers, 36 Phil. 960 (1917).

[22] Id.

[23] PDs 957 and 1216.

[24] They also include the subdivision's gutters, drainage and sewerage. (Section 4[d], Rule III, HSRC Administrative Order No. 82-01).

[25] Section 305(b), RA 7160.

[26] 110 Phil. 331 (1960).

[27] Id.

[28] Id.

[29] Id.

[30] Supra at note 20.

[31] Section 9, Rule IV, HSRC Administrative Order No. 82-01 (Rules and Regulations Implementing Sec. 31 of PD 957, as amended by PD 1216).

[32] See Section 17, RA 7160.

[33] See Paragraphs (b)(2)(viii) and (b)(4), Section 17, RA 7160.

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