MOLDEX REALTY, INC., PETITIONER, VS. HOUSING AND LAND USE REGULATORY BOARD, OFFICE OF APPEALS, ADJUDICATION AND LEGAL AFFAIRS, EDITHA U. BARRAMEDA IN HER CAPACITY AS REGIONAL OF...

G.R. No. 149719. June 21, 2007

Ponente: TINGA, J.

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TINGA, J.:

This is a petition for prohibition and certiorari under Rule 65 of the Rules of Court, seeking the nullification of Resolution No. R-562, series of 1994, issued by the Housing and Urban Development Coordinating Council (HUDCC), as well as the two issuances and the writ of mandatory injunction issued by public respondent Housing and Land Use Regulatory Board (HLURB) in connection with the implementation of the assailed Resolution.

The factual antecedents are as follows:

Petitioner Moldex Realty, Inc. is a domestic corporation engaged in real estate development. It is the owner-developer of Metrogate Complex Phase I, a subdivision situated in Meycauayan, Marilao, Bulacan. In 1988, the HLURB issued petitioner a License to Sell 696 parcels of land within the subdivision. In 1993, a sufficient number of lot buyers and homeowners in the subdivision formally organized to become the Metrogate Complex Village Homeowners' Association (respondent association).

Petitioner claims that since the completion of the subdivision, it had been subsidizing and advancing the payment for the delivery and maintenance of common facilities including the operation of streetlights and the payment of the corresponding electric bills. However, in 2000, petitioner decided to stop paying the electric bills for the streetlights and advised respondent association to assume this obligation. Respondent association objected to petitioner's resolution and refused to pay the electric bills. Thus, Meralco discontinued its service, prompting respondent association to apply for a preliminary injunction and preliminary mandatory injunction with the HLURB against petitioner.

On 5 April 2001, Editha U. Barrameda, in her capacity as Regional Officer of HLURB's Office of Appeals, Adjudication and Legal Affairs, issued a Resolution granting respondent association's application for injunction. In support of the Resolution, Barrameda cited the relevant provisions of Presidential Decree (PD) Nos. 957 and 1216 and HUDCC Resolution No. R-562, series of 1994.

HUDCC Resolution No. R-562, series of 1994, particularly provides that "subdivision owners/developers shall continue to maintain street lights facilities and, unless otherwise stipulated in the contract, pay the bills for electric consumption of the subdivision street lights until the facilities in the project are turned over to the local government until after completion of development in accordance with PD 957, PD 1216 and their implementing rules and regulations."[1]

Petitioner moved for reconsideration but was rebuffed in an Order dated 28 May 2001.[2] After respondent

association filed a bond, Barrameda issued a writ of preliminary mandatory injunction dated 28 June 2001 ordering petitioner to assume the obligation of paying the cost of electricity of the streetlights starting from December 2000 until their turn over or donation to the Municipality of Meycauayan.[3]

Petitioner elevated the matter to the Court of Appeals by filing a Petition for Prohibition and Certiorari, praying not only for the reversal of the writ of preliminary mandatory injunction, as well as the Resolution dated 5 April 2001 and the Order dated 28 May 2001, but also for the nullification of HUDCC Resolution No. R-562, series of 1994, on the ground that it is unconstitutional.

During the pendency of the petition before the Court of Appeals, the HUDCC approved Board Resolution No. R-699, series of 2001, entitled Amending the Rules and Regulations Implementing the Subdivision and Condominium Buyer's Protective Decree and Other Related Laws.[4]

On 27 August 2001, the Court of Appeals dismissed the petition on the ground that petitioner should have raised the constitutionality of HUDCC Resolution No. R-562, series of 1994, directly to this Court. The appellate court likewise found that no proof was submitted to show Mr. Juanito Malto's authority to execute the requisite verification and certification against non-forum shopping in behalf of petitioner.[5]

Following the Court of Appeals' pronouncement that constitutional issues should be raised directly before this Court, petitioner instituted on 21 September 2001 an action for certiorari and prohibition.[6] The petition reiterated the prayer for the reversal of the writ of preliminary mandatory injunction, the Resolution dated 5 April 2001 and the Order dated 28 May 2001, all issued by the HLURB and for the setting aside of HUDCC Resolution No. R-562, series of 1994.

The instant petition is anchored on the following arguments:

> - Resolution No. 526 Series of 1994 issued by the HUDCC is unconstitutional for being a void exercise of legislative power.
>
> - Public respondent gravely abused its direction in issuing the Mandatory Injunction on the basis of a void regulation (HU[D]CC Resolution No. 526 Series of 1994).
>
> - Public respondent abused its discretion in not commanding that the obligation to maintain the subdivision including the payment of the streetlight consumption belongs exclusively to private respondents.[7]

In its Comment,[8] respondent association brought up the tardy filing of the instant petition. It contends that the instant petition, which assails the two HLURB issuances dated 5 April 2001 and 28 May 2001, was filed beyond the 60-day reglementary period for filing a petition for certiorari under Rule 65 of the Rules of Court. In its opinion, the prior filing of a petition for certiorari with the Court of Appeals did not toll the running of the 60-day period.

The Solicitor General agrees, pointing out that the instant petition, captioned as Petition for Prohibition and Certiorari, does not assail the Decision of the Court of Appeals but the twin issuances and the writ of mandatory injunction issued by the HLURB and, therefore, should have been filed within 60 days from petitioner's receipt on 18 June 2001 of the HLURB Order dated 28 May 2001. It appears that when reckoned from 18 June 2001, the filing of the instant petition would go beyond the 60-day reglementary period.

Petitioner maintains, on the contrary, that it filed a petition for certiorari with the Court of Appeals within the reglementary period, but the same was dismissed by the appellate court and "referred" to this Court, as it raised a constitutional issue.

When an administrative regulation is attacked for being unconstitutional or invalid, a party may raise its

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unconstitutionality or invalidity on every occasion that the regulation is being enforced. For the Court to exercise its power of judicial review, the party assailing the regulation must show that the question of constitutionality has been raised at the earliest opportunity.[9] This requisite should not be taken to mean that the question of constitutionality must be raised immediately after the execution of the state action complained of. That the question of constitutionality has not been raised before is not a valid reason for refusing to allow it to be raised later. A contrary rule would mean that a law, otherwise unconstitutional, would lapse into constitutionality by the mere failure of the proper party to promptly file a case to challenge the same.[10]

In the instant case, petitioner has complied with the requirement that the issue of the constitutionality of the subject HUDCC Resolution must be timely raised. Petitioner had already raised the question of constitutionality in its petition filed with the Court of Appeals. The alleged injury caused to petitioner as a result of the implementation of the HUDCC Resolution is continuous in nature in that as long as the assailed resolution is effective, petitioner is obliged to pay for the electricity cost of the streetlights. For every occasion that petitioner is directed to comply with the assailed resolution, a new cause of action to question its validity accrues in favor of petitioner. Thus, the instant petition is not time-barred.

The Solicitor General also points out that it is the Regional Trial Court, and not this Court nor the Court of Appeals, which has jurisdiction to take cognizance of this original action for certiorari and prohibition, notwithstanding Section 4, Rule 65[11] of the Rules of Court.

It must be emphasized that this Court does not have exclusive original jurisdiction over petitions assailing the constitutionality of a law or an administrative regulation. In Drilon v. Lim,[12] it was clearly stated that the lower courts also have jurisdiction to resolve the constitutionality at the first instance, thus:

> We stress at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. x x x Moreover, Article X, Section 5(2), of the Constitution vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.[13]

The general rule is that this Court shall exercise only appellate jurisdiction over cases involving the constitutionality of a statute, treaty or regulation, except in circumstances where the Court believes that resolving the issue of constitutionality of a law or regulation at the first instance is of paramount importance and immediately affects the social, economic and moral well being of the people. Thus, the Court of Appeals erred in ruling that a question on the constitutionality of a regulation may be brought only to this Court.

The instant petition does not allege circumstances and issues of transcendental importance to the public requiring their prompt and definite resolution and the brushing aside of technicalities of procedure. Neither is the Court convinced that the issues presented in this petition are of such nature that would nudge the lower courts to defer to the higher judgment of this Court. The application of the assailed HUDCC resolution mainly affects the proprietary interests of the parties involved and can hardly be characterized as overriding to the general well-being of the people. Ultimately, the Court is called upon to resolve the question of who bears the obligation of paying electricity cost, a question that the lower courts undoubtedly have the competence to resolve.

However, it is also a well-established rule that a court should not pass upon a constitutional question and decide a law, or an administrative regulation as in the instant case, to be unconstitutional or invalid, unless such question is raised by the parties and that when it is raised, if the record also presents some other ground upon which the court

may raise its judgment, that course will be adopted and the constitutional question will be left for consideration until such question will be unavoidable.[14] In other words, the Court will not touch the issue of unconstitutionality unless it is the very lis mota of the case.[15]

Apart from the non-observance of the hierarchy of courts principle, a subsequent development occurred which has not only rendered the question of constitutionality unpivotal but made the resolution of the case itself a pure theoretical exercise. During the pendency of the petition before the Court of Appeals, Board Resolution No. 699, series of 2001, entitled Amending the Rules and Regulations Implementing the Subdivision and Condominium Buyer's Protective Decree and Other Related Laws, was passed by the HUDCC. The regulation amended certain design standards for subdivision projects, among which is the proportionate obligation of subdivision homeowners in the payment of the electricity cost of streetlights.[16] The amendatory provision has superseded the provision in HUDCC Resolution No. R-562, series of 1994, directing subdivision developers to shoulder the electricity cost of streetlights. At the time of the filing of the instant petition, the new provision was already in effect. That being the situation, the instant petition has become moot and academic.

One final note. In the main, petitioner is assailing the constitutionality of Resolution No. R-562, series of 1994, issued by the HUDCC. However, the HUDCC, although obviously an indispensable party, was not impleaded either in the instant petition or in the petition before the Court of Appeals. An indispensable party is a party in interest without whom no final determination can be had of an action, and who shall be joined either as plaintiffs or defendants. The joinder of indispensable parties is mandatory. The presence of indispensable parties is necessary to vest the court with jurisdiction, which is "the authority to hear and determine a cause, the right to act in a case." Thus, without the presence of indispensable parties to a suit or proceeding, the judgment of a court cannot attain real finality. The absence of an indispensable parties renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[17] That is why the case is generally remanded to the court of origin for further proceedings. In this case, however, remand is not feasible because the initial action has to be discarded for failure to observe the hierarchy of courts principle.

WHEREFORE, the instant petition is DISMISSED. Costs against petitioner.

SO ORDERED.
Carpio, Acting chairperson, and Velasco, Jr., JJ., concur.
Quisumbing, J., (Chairperson), on official leave.
Carpio-Morales, J., no part. Former member of the Court of Appeals Division which rendered the assail decision.

[1] Rollo, p. 32

[2] Id. at 35.

[3] Id. at 36.

[4] Id. at 124-177.

[5] Id. at 37-38.

[6] Id. at 3-27.

[7] Id. at 12.

[8] Id. at 46-53.

[9] Allied Banking Corporation v. Quezon City Government, G.R. No. 154126, 11 October 2005, 472 SCRA 303, 317.

[10] La Bugal-B'Laan Tribal Association, Inc. v. Ramos, 465 Phil. 860, 893 (2004).

[11] SECTION 4. Where petition filed. – The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals. (Emphasis supplied.)

[12] G.R. No. 112497, 4 August 1994, 235 SCRA 135.

[13] Id. at 139.

[14] Intia, Jr. v. COA, 366 Phil. 273, 292 (1999).

[15] Id.

[16] Rule I, Section 1.C.7. Electrical Power Supply System – x x x x

Electrical bills for streetlights shall be proportionately shouldered by the users thereof prior to issuance of Certificate of Completion (COC) and turn-over of open space to LGU.

[17]Lotte Phil. Co. Inc. v. Dela Cruz, G.R. No. 166302, 28 July 2005, 464 SCRA 591, 596.

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