

CITY ENGINEER OF BAGUIO AND HON. MAURICIO DOMOGAN, PETITIONERS, VS. ROLANDO BANIQUED, RESPONDENTS.

G.R. No. 150270. November 26, 2008

Ponente: REYES, R.T., J.

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REYES, R.T., J.:

OFT-QUOTED in cases involving searches and seizures is the principle that a man's home is his castle. Not even the king would dare desecrate it. In protecting his home, the poorest and most humble citizen or subject may bid defiance to all the powers of the State.[1] Indeed, a man is king in his own house.

The case before Us views the sanctity of a man's home in a different light. It is about a man's struggle against the attempt of the State to demolish his house.

Petitioners Leo Bernardez, Jr. and Mauricio Domogan question by way of appeal under Rule 45 the Decision[2] and Resolution[3] of the Court of Appeals (CA) which set aside the Order[4] of the Regional Trial Court (RTC) dismissing the complaint[5] for prohibition with temporary restraining order (TRO)/injunction filed by private respondent Rolando Baniqued.

The Facts

Generoso Bonifacio, acting as the attorney-in-fact of Purificacion de Joya, Milagros Villar, Minerva Baluyut and Israel de Leon filed a complaint with the Office of the Mayor of Baguio City seeking the demolition of a house built on a parcel of land[6] located at Upper Quezon Hill, Baguio City.

On May 19, 1999, Domogan, the then city mayor of Baguio City, issued Notice of Demolition No. 55, Series of 1999, against spouses Rolando and Fidela Baniqued. Pertinent parts of the notice read:

The investigation and ocular inspection conducted by the City Engineer's Office (memorandum dated 18 February 1998) showed that you built your structures sometime in 1999 without any building permit in violation of P.D. 1096 and possibly R.A. 7279, qualifying your structure structures illegal, thus, subject to demolition.

The Anti-Squatting Committee in its Resolution No. 52-4 dated 22 April 1999 has recommended for the demolition of your illegal structures.

IN VIEW OF THE FOREGOING, you are hereby notified to voluntarily remove/demolish your illegal structures within seven (7) days from receipt of this notice, otherwise the City Demolition Team will undertake the demolition of your illegal structures at your own expense.[7]

Aggrieved, Rolando Baniqued filed a complaint for prohibition with TRO/injunction before Branch 60 of the RTC in Baguio City.

In his complaint, Baniqued alleged that the intended demolition of his house was done without due process of law and "was arrived at arbitrarily and in a martial-law like fashion." Specifically, Baniqued alleged that he was (1)

never given any copy of the complaint of Generoso Bonifacio; (2) "never summoned nor subpoenaed to answer that complaint"; (3) "never allowed to participate in the investigation and ocular inspection which the City Engineer's Office allegedly conducted, as a consequence of the complaint of Bonifacio, much less to adduce evidence in support of his position"; (4) "never summoned nor subpoenaed to appear before the Anti-Squatting Committee"; and (5) "not given the opportunity to contest the complaint against him, before such complaint was decided and to be carried out by the Defendants." [8]

Baniqued buttressed his complaint by arguing that Article 536 of the Civil Code should be applied, i.e., there should be a court action and a court order first before his house can be demolished and before he can be ousted from the lot. [9] More, under Section 28 of Republic Act 7279, an adequate relocation should be provided first before demolition can be had. [10] Too, by virtue of the National Building Code or Presidential Decree (P.D.) No. 1096, the demolition of buildings or structures should only be resorted to in case they are dangerous or ruinous. Otherwise, the remedy is criminal prosecution under Section 213 of P.D. No. 1096. [11] Lastly, the 1991 Local Government Code does not empower the mayor to order the demolition of anything unless the interested party was afforded prior hearing and unless the provisions of law pertaining to demolition are satisfied. [12] Thus, Baniqued prayed for the following reliefs:

- Immediately upon the filing hereof, a temporary restraining order be issued stopping the Defendants, or any other person acting under their orders or authority, from carrying out, or causing to carry out, the demolition of Plaintiff's residential unit at Upper Quezon Hill, Baguio City under Notice of Demolition No. 55;
- After due notice and hearing, a writ of preliminary injunction be issued for the same purpose as to that of the TRO, and, thereafter, for this preliminary writ to be made permanent;
- A writ of prohibition be issued, commanding the Defendants to stop carrying out, or causing to carry out, the demolition of the aforesaid unit of the Plaintiffs. [13]

On June 7, 1999, the RTC enjoined the carrying out of the demolition of the house of Baniqued. The hearing on his application for preliminary injunction was also set. [14]

On June 25, 1999, petitioners moved to dismiss [15] the complaint of Baniqued on the ground of lack of cause of action because (1) there is nothing to be enjoined "as there is no Demolition Order issued by the City Mayor" and that the Demolition Team "does not demolish on the basis of a mere Notice of Demolition"; (2) he has "no clear legal right to be protected as his structure is illegal, the same having been built on a land he does not own without the consent of the owner thereof and without securing the requisite building permit"; (3) the Notice of Demolition "was issued in accordance with law and in due performance of the duties and functions of defendants, who being public officers, are mandated by law to enforce all pertinent laws against illegal constructions"; and that (4) "[d]efendants do not exercise judicial and quasi-judicial functions. Neither was the issuance of the assailed Notice of Demolition an exercise of a ministerial function. Nor is there any allegation in the complaint that defendants acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction." [16]

RTC and CA Dispositions

On October 15, 1999, the RTC granted the motion of petitioners and dismissed the complaint of Baniqued with the following disposition:

WHEREFORE, finding merit in the motion to dismiss filed by the defendant, the same is hereby GRANTED and this case is hereby DISMISSED without pronouncement as to costs.

Atty. Melanio Mauricio is hereby cited for contempt of court and is hereby warned that a repetition of his use

of improper language whether orally or in any of his pleadings will be dealt with more severely in the future.

SO ORDERED.[17]

The RTC reasoned that petitioners "are unquestionably members of the executive branch whose functions are neither judicial nor quasi-judicial." [18] The RTC also sustained the argument of petitioners that "the act complained of can hardly qualify as ministerial in nature as to put it within the ambit of the rule on prohibition." [19] Lastly, the complaint of Baniqued was procedurally infirm because he failed to exhaust administrative remedies. [20]

Baniqued moved for reconsideration [21] which was opposed. [22] On March 3, 2000, the RTC denied the motion. [23]

Refusing to give up, Baniqued appealed the decision of the RTC. The CA sustained Baniqued, disposing as follows:

IN VIEW OF ALL THE FOREGOING, the instant petition is GRANTED and the appealed Orders dated October 15, 1999 and March 3 2000 are both RECALLED and SET ASIDE and a new one issued DENYING the Motion to Dismiss dated June 25, 1999. After the finality of this judgment, let the entire original records of the case at bench be returned to the court a quo which is reminded to decide the case on the merits and with dispatch. No pronouncement as to costs.

SO ORDERED. [24]

According to the CA, it may be true that the mayor is an executive official. However, as such, he has also been given the authority to hear controversies involving property rights. In that regard, the Mayor exercises quasi-judicial functions. [25]

The CA also held that the allegations in the complaint of Baniqued state a cause of action. The averments in the complaint call for a determination whether court action is needed before Baniqued can be ousted from the questioned lot. [26]

Petitioners attempted at a reconsideration [27] to no avail. Left with no other recourse, they interposed the present appeal. [28]

Issues

Petitioners impute to the CA the following errors, viz.:

- THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN RULING THAT THE ACT OF THE CITY MAYOR IN ISSUING A NOTICE OF DEMOLITION IS A QUASI-JUDICIAL FUNCTION;
- THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN RULING THAT THE ACTION OF PROHIBITION FILED BY BANIQUED WITH THE TRIAL COURT IS PROPER UNDER THE CIRCUMSTANCES;
- THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN REVERSING THE DECISION OF THE TRIAL COURT. [29] (Underscoring supplied)

In sum, petitioners claim that Baniqued incorrectly availed of the remedy of prohibition.

Our Ruling

The petition is unmeritorious.

Baniqued correctly availed of the remedy of prohibition. Prohibition or a "writ of prohibition" is that process by which a superior court prevents inferior courts, tribunals, officers, or persons from usurping or exercising a jurisdiction with which they have not been vested by law.[30] As its name indicates, the writ is one that commands the person or tribunal to whom it is directed not to do something which he or she is about to do. The writ is also commonly defined as one to prevent a tribunal possessing judicial or quasi-judicial powers from exercising jurisdiction over matters not within its cognizance or exceeding its jurisdiction in matters of which it has cognizance.[31] At common law, prohibition was a remedy used when subordinate courts and inferior tribunals assumed jurisdiction which was not properly theirs.

Prohibition, at common law, was a remedy against encroachment of jurisdiction. Its office was to restrain subordinate courts and inferior judicial tribunals from extending their jurisdiction and, in adopting the remedy, the courts have almost universally preserved its original common-law nature, object and function. Thus, as a rule, its proper function is to prevent courts, or other tribunals, officers, or persons from usurping or exercising a jurisdiction with which they are not vested by law, and confine them to the exercise of those powers legally conferred. However, the function of the writ has been extended by some authorities to cover situations where, even though the lower tribunal has jurisdiction, the superior court deems it necessary and advisable to issue the writ to prevent some palpable and irremediable injustice, and, x x x the office of the remedy in some jurisdictions has been enlarged or restricted by constitutional or statutory provisions. While prohibition has been classified as an equitable remedy, it is generally referred to as a common-law remedy or writ; it is a remedy which is in nature legal, although, x x x its issuance is governed by equitable principles.[32] (Citations omitted)

Prohibition is not a new concept. It is a remedy of ancient origin. It is even said that it is as old as common law itself. The concept originated in conflicts of jurisdiction between royal courts and those of the church.[33] In our jurisdiction, the rule on prohibition is enshrined in Section 2, Rule 65 of the Rules on Civil Procedure, to wit:

Sec. 2. Petition for prohibition. - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that the judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as the law and justice require.

The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

It is very clear that before resorting to the remedy of prohibition, there should be "no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law." Thus, jurisprudence teaches that resort to administrative remedies should be had first before judicial intervention can be availed of.

This Court in a long line of cases has consistently held that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before court's judicial power can be sought. The premature invocation of court's intervention is fatal to one's cause of action. x x x[34]

Explaining the reason behind the rule, Mr. Justice Justo Torres, Jr., expounded, thus:

x x x This doctrine of exhaustion of administrative remedies was not without its practical and legal reasons, for

one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that the courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case. x x x[35]

Petitioners are of the view that the complaint of Baniqued for prohibition is fatally defective because he failed to exhaust administrative remedies. If he felt aggrieved by the issuance of the notice of demolition, administrative remedies were readily available to him. For example, he could have easily filed a motion for reinvestigation or reconsideration.[36]

The argument fails to persuade.

The doctrine of exhaustion of administrative remedies is not an iron-clad rule.[37] It admits of several exceptions. Jurisprudence is well-settled that the doctrine does not apply in cases (1) when the question raised is purely legal; (2) when the administrative body is in estoppel; (3) when the act complained of is patently illegal; (4) when there is urgent need for judicial intervention; (5) when the claim involved is small; (6) when irreparable damage will be suffered; (7) when there is no other plain, speedy, and adequate remedy; (8) when strong public interest is involved; (9) when the subject of the proceeding is private land; (10) in quo warranto proceedings; and (11) where the facts show that there was violation of due process.[38]

Here, there was an urgent need for judicial intervention. The filing of a motion for reinvestigation or reconsideration would have been a useless exercise. The notice of demolition is very clear and speaks for itself. City Mayor Domogan already made up his mind that the house of Baniqued was illegally built and was thus subject to demolition. It could reasonably be assumed that a motion for reinvestigation or reconsideration would have also been denied outright. The irreparable damage to Baniqued in case his house was demolished cannot be gainsaid.

Petitioners contend, though, that the complaint of Baniqued is premature. They say that what was issued by City Mayor Domogan was only a notice of demolition, and not an order of demolition.[39] In short, petitioners are saying that Baniqued jumped the gun. He should have waited first for the issuance of a demolition order because no demolition can be carried out in the absence of such order.

To Our mind, the distinction between a notice of demolition and an order of demolition is immaterial. What is material is that Baniqued felt threatened with the impending demolition of his house. It would have been too late and illogical if he waited first for his house to be actually demolished, before seeking protection from the courts. Acting in the earliest opportunity and availing of the best remedy available to protect his right was the prudent course of action.

Petitioners also argue that the complaint of Baniqued should not prosper because he never alleged that the act complained of was done without or in excess of jurisdiction or with grave abuse of discretion.[40] To support their stance, they cite *Reyes v. Romero*[41] where this Court denied the petition for prohibition because there was "no allegation whatsoever charging the respondent Judge with lack of jurisdiction or with having committed grave abuse of discretion." [42] Put differently, petitioners argue that for a complaint for prohibition to prosper, there should be a specific allegation that the act complained of was done without or in excess of jurisdiction or with grave abuse of discretion.

The argument is specious on two grounds.

First, *Romero* is not necessarily applicable to the instant case because it involved a different set of facts. There, a

team of PC Rangers raided a house in Pasay City, Rizal, which was dubbed as a Gambling Casino. As a result, twelve persons were charged for violating the gambling law. The case was tried in the branch of the Municipal Trial Court in Pasay presided by Judge Lucio Tianco. The accused were later acquitted for insufficiency of evidence.

An off-shoot of the raid was the prosecution of petitioners as maintainers of a gambling den. The case was also assigned to the sala of Judge Tianco. However, as Judge Tianco was on leave, the Secretary of Justice designated Judge Guillermo Romero to preside over said branch.

Sometime later, Judge Tianco returned to office and resumed his duties. This, notwithstanding, Judge Romero ordered the continuation of the trial before him. Petitioners then sought the inhibition of Judge Romero in view of the return of Judge Tianco. The motion was denied. The matter was brought directly to this Court on petition for prohibition with preliminary injunction. One of the two issues resolved by the Court was "whether respondent Judge in refusing to inhibit himself from continuing with the trial of the criminal case in question, acted without or in excess of his jurisdiction or with grave abuse of discretion." [43]

Clearly, the surrounding circumstances in Romero are absent in the case now before Us. They cannot be remotely applied even by analogy.

Second, petitioners misconstrued Romero by interpreting it literally. The better interpretation is that the absence of specific allegation that the act complained of was done without or in excess of jurisdiction or with grave abuse of discretion would not automatically cause the dismissal of the complaint for prohibition, provided that a reading of the allegations in the complaint leads to no other conclusion than that the act complained of was, indeed, done without or in excess of jurisdiction. To subscribe to the reasoning of petitioners may lead to an absurd situation. A patently unmeritorious complaint for prohibition may not be given due course just because of an allegation that the act complained of was committed without or in excess of jurisdiction or with grave abuse of discretion.

This interpretation is supported by Romero itself. Petitioners overlooked that the case goes on to say that even if there were allegations of grave abuse of discretion, "there can be no abuse of discretion, much less a grave one, for respondent Judge to comply with a valid and legal Administrative Order (No. 183) of the Secretary of Justice." [44]

The Mayor, although performing executive functions, also exercises quasi-judicial function which may be corrected by prohibition. As a parting argument, petitioners contend that the complaint of Baniqued is outside the scope of the rule on prohibition which covers the proceedings of any "tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions." The issuance of the notice of demolition by the City Mayor is never a judicial, ministerial or rule-making function. It is strictly an act of law enforcement and implementation, which is purely an executive function. Neither is the Office of the City Mayor a quasi-judicial body. [45]

Again, petitioners are mistaken. We need not belabor so much on this point. We quote with approval the CA observations in this regard, viz.:

Under existing laws, the office of the mayor is given powers not only relative to its function as the executive official of the town. It has also been endowed with authority to hear issues involving property rights of individuals and to come out with an effective order or resolution thereon. In this manner, it exercises quasi-judicial functions. This power is obviously a truism in the matter of issuing demolition notices and/or orders against squatters and illegal occupants through some of its agencies or authorized committees within its respective municipalities or cities.

There is no gainsaying that a city mayor is an executive official nor is the matter of issuing demolition notices

or orders not a ministerial one. But then, it cannot be denied as well that in determining whether or not a structure is illegal or it should be demolished, property rights are involved thereby needing notices and opportunity to be heard as provided for in the constitutionally guaranteed right of due process. In pursuit of these functions, the city mayor has to exercise quasi-judicial powers. Moreno, in his Philippine Law Dictionary, 3[rd] Edition, defines quasi-judicial function as applying to the action discretion, etc. of public administrative officers or bodies, who are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature (Midland Insurance Corp. v. Intermediate Appellate Court, 143 SCRA 458 [1986]). Significantly, the Notice of Demolition in issue was the result of the exercise of quasi-judicial power by the Office of the Mayor.[46]

We also agree with the CA that the complaint of Baniqued states a cause of action. The averments in the complaint "call for a determination of whether or not there is need for a court action or a court litigation to oust plaintiff from the possession of the subject lot, or, it is within the jurisdictional prerogative of the Office of the Mayor to eject [an] unlawful occupant from a private titled land he does not own." [47]

Lest this Decision be misunderstood, We hasten to clarify that We have not prejudged the merits of the case. Whether or not Baniqued is, indeed, entitled to a writ of prohibition is a matter which the trial court should determine in the first instance without further delay.

WHEREFORE, the appealed Decision is AFFIRMED. The case is REMANDED to the trial court for further proceedings.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

[1] U.S. v. Arceo, 3 Phil. 381, 384 (1904).

[2] Rollo, pp. 15-21; Annex "A." CA-G.R. SP No. 59219. Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Martin S. Villarama, Jr. and Eliezer R. De los Santos, concurring.

[3] Id. at 2; Annex "B."

[4] Id. at 42-43; Annex "E." Penned by Judge Edilberto T. Claravall.

[5] Id. at 26-33; Annex "C."

[6] Covered by TCT No. 25860.

[7] Rollo, p. 35; Annex "A."

[8] Id. at 28.

[9] Id. at 29.

[10] Id. at 30.

[11] Id.

[12] Id. at 31.

[13] Id. at 32.

[14] Id. at 17.

[15] Annex "D."

[16] Rollo, pp. 37-39.

[17] Id. at 43.

[18] Id.

[19] Id.

[20] Id.

[21] Annex "F."

[22] Annex "G."

[23] Annex "F."

[24] Rollo, p. 21.

[25] Id. at 19-20.

[26] Id. at 20.

[27] Annex "I."

[28] Rollo, pp. 3-13.

[29] Id. at 6.

[30] 73 C.J.S., § 1. (Citations omitted)

[31] 63 Am. Jur. 2d, § 1. (Citations omitted)

[32] 73 C.J.S., § 2(b).

[33] Id., § 2(a). "Prohibition is a remedy of ancient origin, and has been said to be as old as the common law itself. It was one of the prerogative writs of the king, having for its function the preservation of the right of the king's crown and courts. The process originated in conflict of jurisdiction between the royal courts and those of the church, and was most frequently employed in early times against the ecclesiastical courts to restrain them from acting without jurisdiction. Anciently, a writ of prohibition was an original, as distinguished from a judicial writ, and could issue only out of chancery. In later times writs of prohibition became judicial writs out of a court of law, and do not appear to have issued from a court of chancery in any case in which a court of law might issue them, except during vacation, when the courts of common law were not open, and in this country [i.e., the United States] these writs have never been issued except by a court of common-law jurisdiction. In accordance with, and subject to, general rules, the remedy of prohibition has been accepted in the United States as part of the common-law system and employed in practice wherever it is suited to the arrangement of the judicial system. Like other common law remedies, it is generally recognized as existing in this country unless abolished by positive statutory enactment." (Citations omitted)

[34] Paat v. Court of Appeals, G.R. No. 111107, January 10, 1997, 266 SCRA 167, 175, citing National Development Company v. Hervilla, G.R. No. L-65718, June 30, 1987, 151 SCRA 521; Aboitiz and Co., Inc. v. Collector of Customs, G.R. No. L-29466, May 18, 1978, 83 SCRA 265; Pestanas v. Dyogi, G.R. No. L-25786, February 27, 1978, 81 SCRA 574; Atlas Consolidated Mining & Development Corporation v. Mendoza, G.R. No.

L-15809, August 30, 1961, 2 SCRA 1064. See also 63C Am. Jur. 2d, § 58 which states: "Where an administrative remedy is provided by the statute and is intended to be exclusive, a court has no authority to oust the administrative agency of its jurisdiction by hearing the case; therefore, a court that hears such case is acting without jurisdiction, rather than merely committing an error of law, and is subject to prohibition.

An agency may seek prohibition preventing court interference with cases pending before it, and the hardship the agency faces caused by a court order halting its proceedings is sufficient to justify the granting of the writ." (Citations omitted.)

[35] Id. at 175-176.

[36] Rollo, p. 130.

[37] *Triste v. Leyte State College Board of Trustees*, G.R. No. 78623, December 17, 1990, 192 SCRA 326, 334.

[38] *Diokno v. Cacdac*, G.R. No. 168475, July 4, 2007, 526 SCRA 440, 458-459.

[39] Rollo, pp. 131-132.

[40] Id. at 132-133.

[41] G.R. No. L-14917, May 31, 1961, 2 SCRA 438.

[42] *Reyes v. Romero*, id. at 441.

[43] Id.

[44] Id.

[45] Rollo, pp. 133-135.

[46] Id. at 19-20.

[47] Id. at 20.

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