

SPS. LEONARDO AND MILAGROS CHUA, PETITIONERS, VS. HON. JACINTO G. ANG, DENNIS R. PASTRANA, IN THEIR CAPACITIES AS CITY AND ASSISTANT PROSECUTOR OF PASIG, RESPECTIVELY, FERDINAND...

G.R. No. 156164. September 04, 2009

Ponente: BRION, J.

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BRION, J.:

Before us is the petition for certiorari[1] filed by the spouses Leonardo and Milagros Chua (petitioners) to assail the Resolution dated November 4, 2002 of the City Prosecutor of Pasig in I.S. No. PSG 02-02-09150. The City Prosecutor's Resolution dismissed the complaint filed by the petitioners against Ferdinand T. Santos, Robert John L. Sobrepeña, Noel M. Cariño, Roberto S. Roco, Alice Odchique-Bondoc, Romulo T. Santos and Enrique A. Sobrepeña, Jr. (private respondents) for violation of Presidential Decree (P.D.) No. 957, otherwise known as "The Subdivision and Condominium Buyers Protective Decree."

FACTUAL BACKGROUND

The antecedent facts, drawn from the records, are briefly summarized below.

On February 11, 1999, the petitioners (as buyers) and Fil-Estate Properties, Inc. (FEPI, as developers) executed a Contract To Sell[2] a condominium unit. Despite the lapse of three (3) years, FEPI failed to construct and deliver the contracted condominium unit to the petitioners.

As a result, the petitioners filed on September 3, 2002 a Complaint-Affidavit[3] before the Office of the City Prosecutor of Pasig City accusing the private respondents, as officers and directors of FEPI, of violating P.D. No. 957, specifically its Sections 17 and 20, in relation with Section 39.[4] These provisions state:

Sec. 17. Registration. - All contracts to sell, deeds of sale and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units, whether or not the purchase price is paid in full, shall be registered by the seller in the Office of the Register of Deeds of the province or city where the property is situated.

X X X

Sec. 20. Time of Completion. - Every owner or developer shall construct and provide the facilities, improvements, infrastructures and other forms of development, including water supply and lighting facilities, which are offered and indicated in the approved subdivision or condominium plans, brochures, prospectus, printed matters, letters or in any form of advertisement, within one year from the date of the issuance of the license for the subdivision or condominium project or such other period of time as may be fixed by the Authority.

X X X

Sec. 39. Penalties. - Any person who shall violate any of the provisions of this Decree and/or any rule or regulation that may be issued pursuant to this Decree shall, upon conviction, be punished by a fine of not more than twenty thousand (P20,000.00) pesos and/or imprisonment of not more than ten years: Provided, That in the case of corporations, partnership, cooperatives, or associations, the President, Manager or Administrator or the person who has charge of the administration of the business shall be criminally responsible for any violation of this Decree and/or the rules and regulations promulgated pursuant thereto. [Emphasis supplied]

The petitioners alleged that the private respondents did not construct and failed to deliver the contracted condominium unit to them and did not register the Contract to Sell with the Register of Deeds.

Of the seven (7) private respondents, only private respondent Alice Odchique-Bondoc filed a Counter-Affidavit.[5] She countered that the City Prosecutor has no jurisdiction over the case since it falls under the exclusive jurisdiction of the Housing and Land Use Regulatory Board (HLURB).

On November 4, 2002, Assistant City Prosecutor Dennis R. Pastrana and Pasig City Prosecutor Jacinto G. Ang (public respondents), respectively issued and approved the Resolution[6] dismissing the complaint for being premature. The Resolution held that it is the HLURB that has exclusive jurisdiction over cases involving real estate business and practices.

THE PETITION and THE PARTIES' POSITIONS

On December 12, 2002, the petitioners filed the present petition[7] anchored on the following ground:

PUBLIC RESPONDENTS COMMITTED MANIFEST ERROR AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, WHEN IT DISMISSED PETITIONER'S COMPLAINANT (sic) ON THE GROUND THAT THE HLURB, NOT THEIR OFFICE HAS JURISDICTION TO CONDUCT PRELIMINARY INVESTIGATION AND FILE THE CORRESPONDING INFORMATION IN COURT FOR CRIMINAL VIOLATIONS OF P.D. No. 957.[8]

The petitioners argue that jurisdiction to entertain criminal complaints is lodged with the city prosecutor and that the jurisdiction of the HLURB under P.D. No. 957 is limited to the enforcement of contractual rights, not the investigation of criminal complaints.

In their Comment,[9] the private respondents submit that the petition should be dismissed outright because the petitioners failed to avail of other remedies provided by law, such as (a) the filing of a motion for reconsideration with the City Prosecutor of Pasig City, (b) the filing of a petition for review with the Secretary of the Department of Justice (DOJ), (c) the filing of a motion for reconsideration of any judgment rendered by the DOJ, or (d) the filing of an appeal or a petition for certiorari with the Court of Appeals (CA); that even if certiorari is a proper remedy, the petition was filed in violation of the hierarchy of courts; and that even on the merits, the petition must fail since the public respondents correctly dismissed the complaint as a reasonable interpretation of P.D. No. 957 which requires a prior determination by the HLURB that a corporation violated P.D. No. 957 before criminal charges may be filed against its corporate officers.

In their Reply, the petitioners reiterate that the public respondents abdicated their authority to conduct a preliminary investigation and to indict the private respondents for criminal violations of P.D. No. 957 when they dismissed the criminal complaint for being premature.[10]

OUR RULING

We find the petition meritorious.

At the outset, we note that the petitioners indeed filed the present petition for certiorari without prior recourse to other available remedies provided by law and the observance of the judicial hierarchy of courts. Nonetheless, the

rules on prior recourse to these available remedies are not without exceptions, nor is the observance of the judicial hierarchy of courts an inflexible rule; the peculiarity, uniqueness and unusual character of the factual and circumstantial settings of a case may allow the flexible application of these established legal principles to achieve fair and speedy dispensation of justice.

A prior motion for reconsideration is unnecessary: (a) where the order is a patent nullity, as where the court a quo has no jurisdiction; (b) where the questions raised in the certiorari proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is an extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the grant of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceedings were ex parte or in which the petitioner had no opportunity to object; or (i) where the issue raised is one purely of law or where public interest is involved.[11]

On the other hand, prior exhaustion of administrative remedies may be dispensed with and judicial action may be validly resorted to immediately: (a) when there is a violation of due process; (b) when the issue involved is purely a legal question; (c) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (d) when there is estoppel on the part of the administrative agency concerned; (e) when there is irreparable injury; (f) when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter; (g) when to require exhaustion of administrative remedies would be unreasonable; (h) when it would amount to a nullification of a claim; (i) when the subject matter is a private land in land case proceedings; (j) when the rule does not provide a plain, speedy and adequate remedy; or (k) when there are circumstances indicating the urgency of judicial intervention.[12]

On the non-observance of the principle of hierarchy of courts, it must be remembered that this rule generally applies to cases involving conflicting factual allegations. Cases which depend on disputed facts for decision cannot be brought immediately before us as we are not triers of facts.[13] A strict application of this rule may be excused when the reason behind the rule is not present in a case, as in the present case, where the issues are not factual but purely legal. In these types of questions, this Court has the ultimate say so that we merely abbreviate the review process if we, because of the unique circumstances of a case, choose to hear and decide the legal issues outright.[14]

In the present petition for certiorari, we find that there are four (4) compelling reasons to allow the petitioners' invocation of our jurisdiction in the first instance, even without prior recourse to a motion for reconsideration or to the exhaustion of administrative remedies, and even in disregard of the principle of hierarchy of courts.

First, the petitioners raise a pure question of law involving jurisdiction over criminal complaints for violation of P.D. No. 957. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted.[15] As noted earlier, this Court is the undisputed final arbiter of all questions of law.

Second, the present case requires prompt action because public interest and welfare are involved in subdivision and condominium development, as the terms of P.D. Nos. 957 and 1344 expressly reflect.[16] Questions of conflicting processes, essentially based on jurisdiction, will consistently recur as people's need for housing (and hence, subdivisions and condominiums) escalate. Shelter is a basic human need whose fulfillment cannot afford

any kind of delay.[17]

Third, considering that this case has been pending for nearly seven (7) years (since the filing of the Complaint-Affidavit on September 3, 2002) to the prejudice not only of the parties involved, but also of the subdivision and condominium regulatory system and its need for the prompt determination of controversies, the interests of justice now demand the direct resolution of the jurisdictional issue this proceeding poses. As mentioned, at stake in this case is shelter - a basic human need and to remand the case to the DOJ for a determination of the merits of the parties' jurisdictional tug-of-war would not serve any purpose other than to further delay its resolution.[18] Thus, the practicality of the situation and the need for the speedy administration of justice justify a departure from the strict application of procedural rules. Besides, the issue before us presents no special difficulty, and we feel it should be decided now, without going through the procedural formalities that shall anyway end up with this Court.

Fourth, the petition is meritorious. The public respondents committed grave abuse of discretion in dismissing the criminal complaints for violation of P.D. No. 957 on the ground that jurisdiction lies with the HLURB.

Generally, the extent to which an administrative agency may exercise its powers depends largely, if not wholly, on the provisions of the statute creating and defining the terms of the agency's mandate. P.D. No. 1344 clarifies and spells out the quasi-judicial dimensions of the grant of jurisdiction to the HLURB in the following specific terms:[19]

SEC. 1. In the exercise of its functions to regulate the real estate trade and business and in addition to its powers provided for in Presidential Decree No. 957, the National Housing Authority shall have exclusive jurisdiction to hear and decide cases of the following nature:

A. Unsound real estate business practices;

B. Claims involving refund and any other claims filed by subdivision lot or condominium unit buyer against the project owner, developer, dealer, broker or salesman; and

C. Cases involving specific performance of contractual and statutory obligations filed by buyers of subdivision lots or condominium units against the owner, developer, dealer, broker or salesman.

The extent of its quasi-judicial authority, on the other hand, is defined by the terms of P.D. No. 957 whose Section 3 provides:

x x x National Housing Authority [now HLURB]. - The National Housing Authority shall have exclusive jurisdiction to regulate the real estate trade and business in accordance with the provisions of this Decree.

The provisions of P.D. No. 957 were intended to encompass all questions regarding subdivisions and condominiums. The intention was to provide for an appropriate government agency, the HLURB, to which all parties - buyers and sellers of subdivision and condominium units - may seek remedial recourse. The law recognized, too, that subdivision and condominium development involves public interest and welfare and should be brought to a body, like the HLURB, that has technical expertise.[20] In the exercise of its powers, the HLURB, on the other hand, is empowered to interpret and apply contracts, and determine the rights of private parties under these contracts. This ancillary power, generally judicial, is now no longer with the regular courts to the extent that the pertinent HLURB laws provide.[21]

Viewed from this perspective, the HLURB's jurisdiction over contractual rights and obligations of parties under subdivision and condominium contracts comes out very clearly. But hand in hand with this definition and grant of authority is the provision on criminal penalties for violations of the Decree, provided under the Decree's Section 39, heretofore quoted. Significantly, nothing in P.D. No. 957 vests the HLURB with jurisdiction to impose the

Section 39 criminal penalties. What the Decree provides is the authority of the HLURB to impose administrative fines under Section 38, as implemented by the Rules Implementing the Subdivision and Condominium Buyer's Protective Decree. This Section of the Decree provides:

Sec. 38. Administrative Fines. - The Authority may prescribe and impose fines not exceeding ten thousand pesos for violations of the provisions of this Decree or of any rule or regulation thereunder. Fines shall be payable to the Authority and enforceable through writs of execution in accordance with the provisions of the Rules of Court.

The Implementing Rules, for their part, clarify that "The implementation and payment of administrative fines shall not preclude criminal prosecution of the offender under Section 39 of the Decree." Thus, the implementing rules themselves expressly acknowledge that two separate remedies with differing consequences may be sought under the Decree, specifically, the administrative remedy and criminal prosecution.

Unless the contrary appears under other provisions of law (and in this case no such provision applies), the determination of the criminal liability lies within the realm of criminal procedure as embodied in the Rules of Court. Section 2, Rule 112 of these Rules provide that the prerogative to determine the existence or non-existence of probable cause lies with the persons duly authorized by law; as provided in this Rule, they are (a) Provincial or City Prosecutors and their assistants; (b) Judges of the Municipal Trial Courts and Municipal Circuit Trial Courts; (c) National and Regional State Prosecutors; and (d) other officers as may be authorized by law.

In the present case, the petitioners have expressly chosen to pursue the criminal prosecution as their remedy but the prosecutor dismissed their complaint. The prosecutor's dismissal for prematurity was apparently on the view that an administrative finding of violation must first be obtained before recourse can be made to criminal prosecution. This view is not without its model in other laws; one such law is in the prosecution of unfair labor practice under the Labor Code where no criminal prosecution for unfair labor practice can be instituted without a final judgment in a previous administrative proceeding.[22] The need for a final administrative determination in unfair labor practice cases, however, is a matter expressly required by law. Where the law is silent on this matter, as in this case, the fundamental principle - that administrative cases are independent from criminal actions[23] - fully applies, subject only to the rules on forum shopping under Section 5, Rule 7 of the Rules of Court.[24] In the present case, forum shopping is not even a matter for consideration since the petitioners have chosen to pursue only one remedy - criminal prosecution. Thus, we see no bar to their immediate recourse to criminal prosecution by filing the appropriate complaint before the prosecutor's office.

In light of these legal realities, we hold that the public respondent prosecutors should have made a determination of probable cause in the complaint before them, instead of simply dismissing it for prematurity. Their failure to do so and the dismissal they ordered effectively constituted an evasion of a positive duty and a virtual refusal to perform a duty enjoined by law; they acted on the case in a manner outside the contemplation of law. This is grave abuse of discretion amounting to a lack of or in excess of jurisdiction warranting a reversal of the assailed resolution.[25] In the concrete context of this case, the public prosecutors effectively shied away from their duty to prosecute, a criminal violation of P.D. No. 957 as mandated by Section 5, Rule 110 of the Rules of Court and Republic Act No. 5180,[26] as amended,[27] otherwise known as the Law on Uniform Procedure of Preliminary Investigation.

As a final word, we stress that the immediate recourse to this Court that this Decision allows should not serve as a precedent in other cases where the prosecutor dismisses a criminal complaint, whether under P.D. No. 957 or any other law. Recourse to (a) the filing a motion for reconsideration with the City or Provincial Prosecutor, (b) the filing a petition for review with the Secretary of the DOJ, (c) the filing a motion for reconsideration of any judgment rendered by the DOJ, and (d) intermediate recourse to the CA, are remedies that the dictates of orderly

procedure and the hierarchy of authorities cannot dispense with. Only the extremely peculiar circumstances of the present case compelled us to rule as we did; thus our ruling in this regard is a rare one that should be considered *pro hac vice*.

WHEREFORE, we hereby GRANT the petition and accordingly REVERSE and SET ASIDE the Resolution dated November 4, 2002 of the City Prosecutor of Pasig in I.S. No. PSG 02-02-09150. The complaint is hereby ordered returned to the Office of the City Prosecutor of Pasig City for the determination of probable cause and the filing of the necessary information, if warranted. No costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Del Castillo, and Abad, JJ., concur.

[*] Spelled as "Alice Odchigue-Bondoc" in other parts of the record.

[1] Under Rule 65 of the Rules of Court.

[2] Rollo, pp. 37-48.

[3] *Id.*, pp. 30-33.

[4] *Id.*, pp. 34-36.

[5] *Id.*, pp. 56-64.

[6] *Id.*, pp. 22-27.

[7] *Id.*, pp. 3-21.

[8] *Id.*, p. 8.

[9] *Id.*, p. 45.

[10] *Id.*, p. 91.

[11] *Aguilar v. Manila Banking Corporation*, G.R. No. 157911, September 19, 2006, 502 SCRA 354, 373; *Tan, Jr. v. Sandiganbayan*, G.R. No. 128764, July 10, 1998, 292 SCRA 452, 457; *Tan v. Court of Appeals*, G.R. No. 108634, July 17, 1997, 275 SCRA 568, 574-575.

[12] *Buston-Arendain v. Gil*, G.R. No. 172585, June 26, 2008, 555 SCRA 561, 573; *Paat v. Court of Appeals*, G.R. No. 111107, January 10, 1997, 266 SCRA 167.

[13] *Mangaliag v. Catubig-Pastoral*, G.R. No. 143951, October 25, 2005, 474 SCRA 153, 161; *Agan, Jr. v. Philippine International Air Terminals Co., Inc.*, G.R. Nos. 155001, 155547 and 155661, January 21, 2004, 420 SCRA 575, 584.

[14] *Pacoy v. Cajigal*, G.R. No. 157472, September 28, 2007, 534 SCRA 338, 346; *Real v. Belo*, G.R. No. 146224, January 17, 2007, 513 SCRA 111.

[15] *Mendoza v. Salinas*, G.R. No. 152827, February 6, 2007, 514 SCRA 414, 419; *Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank & Trust Co.*, G.R. No. 161882, July 8, 2005, 463 SCRA 222, 233.

[16] Entitled "Empowering The National Housing Authority To Issue Writ Of Execution In The Enforcement Of Its Decision Under Presidential Decree No. 957."

[17] The first whereas clause of Executive Order No. 90 of December 17, 1986, entitled "Identifying the Government Agencies Essential for the National Shelter Program and Defining their Mandates, Creating the Housing and Urban Development Coordinating Council, Rationalizing Funding Sources and Lending Mechanisms for Home Mortgages and For Other Purposes," reads:

"WHEREAS, Government recognizes that shelter is a basic need for which low and middle income families, particularly in urbanized areas, require assistance; x x x" (Emphasis supplied).

[18] See *Filipinas Manufacturers Bank v. Eastern Rizal Fabricators*, G.R. No. L-62741, May 29, 1987, 150 SCRA 443.

[19] Jurisdiction was originally vested in the National Housing Authority (NHA) under P.D. No. 957, later clarified by P.D. No. 1344. Under Executive Order (E.O.) No. 648 of February 7, 1981, this jurisdiction was transferred to the Human Settlements Regulatory Commission (HSRC) which, pursuant to E.O. No. 90 of December 17, 1986, was renamed as the Housing and Land Use Regulatory Board (HLURB).

[20] See *Arranza v. B. F. Homes, Inc.*, G.R. No. 131683, June 19, 2000, 333 SCRA 799.

[21] *Antipolo Realty Corporation v. National Housing Authority*, No. L-50444, August 31, 1987, 153 SCRA 399, 407.

[22] Article 247, Labor Code.

[23] *People v. Toledano*, G.R. No. 110220, May 18, 2000, 332 SCRA 210, 216-217; *Larin v. Executive Secretary*, G.R. No. 112745, October 16, 1997, 280 SCRA 713, 727; see also *Barillo v. Gervacio*, G.R. No. 155088, August 31, 2006, 500 SCRA 561, 572.

[24] Section 5, Rule 7 of the Rules of Court provides:

Sec. 5. Certification against forum shopping. - The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or noncompliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

[25] *Deutsche Bank Manila v. Chua Yok See*, G.R. No. 165606, February 6, 2006, 481 SCRA 672, 692; *Perez v. Court of Appeals*, G.R. No. 162580, January 27, 2006, 480 SCRA 411, 416.

[26] Entitled "An Act Prescribing a Uniform System of Preliminary Investigation by Provincial and City Fiscals and Their Assistants, and by State Prosecutors or their Assistants," approved on September 8, 1967.

[27] By Presidential Decree No. 77, effective December 6, 1972, and Presidential Decree No. 911, effective March 23, 1976.

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