

**HEIRS OF SPS. LUCIANO AND CONSOLACION VENTURILLO,
REPRESENTED BY ROWENA B. VENTURILLO-SUCALDITO,
PETITIONERS, VS. HON. JESUS V. QUITAIN, PRESIDING JUDGE,
RTC-BR. 15, 11TH JUDICI...**

G.R. NO. 157972. October 30, 2006

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TINGA, J.:

The Heirs of Spouses Luciano and Consolacion Venturillo (Heirs of Venturillo), represented by Rowena B. Venturillo-Sucaldito, assail for having been issued with grave abuse of discretion the Order[1] dated April 22, 2003 of the Regional Trial Court of Davao City, Branch 15, which dismissed their petition for mandamus and denied their prayer for injunctive relief.

The following statement of facts is taken from the Court's Resolution[2] dated May 15, 2003:

Sometime in 1942, the Spouses Luciano and Consolacion Venturillo occupied a 678-square meter lot in Poblacion, Davao City, said lot being public land. The Venturillo couple erected a house on the said property and begot 11 children, the petitioners herein, during their lifetime.

In 1974, the Davao City Assessor's Office directed the Venturillos to file a Tax Declaration. They complied with the said directive and paid the required taxes. The petitioners then continued the renewal of the tax declarations and paying of taxes.

Sometime in 2000, Rowena Venturillo-Sucaldito filed a sales application with the Department of Environment and Natural Resources (DENR) and the DENR wrote the City Government for its comments regarding her application. In response, respondent City Engineer sent an inspection team to check out the property.

On June 8, 2000, the inspectors submitted a report recommending the approval of Sucaldito's application. No immediate action, however, was taken by respondent City Engineer on the report.

On October 4, 2001, respondent City Engineer asked the petitioners to secure a building permit for the house erected on the lot, after it was shown that said structure had no building permit.

The petitioners then hired an engineer who prepared the necessary plans and other documents, which were submitted to the respondent City Engineer.

On October 27, 2002, the Sanggunian Barangay of Barangay 4-A, Poblacion, Davao City passed a resolution requesting the Sanggunian Panglungsud of Davao City to declare the portion of the proposed extension of Mayon St., as "suppressed road." [3]

On January 8, 2003, respondent City Engineer sent petitioners a Notice of Order of Removal.

On February 13, 2003, the Zoning Administrator wrote petitioners that the area they were occupying is a road right-of-way.

On March 20, 2003, the petitioners herein filed a petition for mandamus with urgent prayer for temporary

restraining order (TRO) and preliminary injunction against respondent City Engineer with the RTC of Davao City, docketed as SP Civil Case No. 29597-2003. The trial court granted the temporary restraining order prayed for.

On March 25, 2003, the trial court ordered the parties in a hearing set for March 27, 2003 to determine whether the TRO should be extended for 17 days. Said hearing, however, was cancelled at the manifestation of the respondent City Engineer.

On March 31, 2003, the hearing for the writ of preliminary injunction was set for April 14-15, 2003.

On April 8, 2003, respondent City Engineer moved for an extension of time to file his answer to the petition.

On April 15, 2003, the respondent City Engineer manifested in open court that he was not opposing the application for a writ of preliminary injunction. The trial court then ordered the petitioners to submit their formal offer of exhibits to support their application on April 21, 2003 and the City Engineer to comment upon the same within five days from receipt, after which the trial court would rule upon the application for injunction.

On April 22, 2003, petitioner moved to have their tardily filed formal exhibits admitted and submitted their formal offer of exhibits. That same day, the trial court denied the issuance of the writ of preliminary injunction and dismissed the SP Civil Case No. 29597-2003.

The Heirs of Venturillo allege that the trial court gravely abused its discretion when it dismissed their petition for mandamus and denied their prayer for injunction without: (1) ruling on the admissibility of their admittedly tardy formal offer of exhibits; (2) waiting for respondent City Engineer's comment or objection to said formal offer; and (3) without waiting for the answer of the City Engineer in the mandamus case.

In the afore-cited Resolution dated May 15, 2003, the Court, ruling that there is a need to maintain the last, actual, peaceable, and uncontested state of things which preceded the present controversy, directed the parties to maintain the status quo.[4]

The Office of the City Legal Officer filed a Comment[5] dated July 31, 2003 on behalf of respondent City Engineer Meinrado R. Metran, contending that the trial court's dismissal of the petition for mandamus and denial of the prayer for injunction do not constitute grave abuse of discretion. According to respondent, the Heirs of Venturillo were not able to establish any legal right to demand the issuance of a building permit because the lot on which their structure was constructed remains to be public land delineated as a road right-of-way. Although the Heirs of Venturillo filed a sales application with the DENR, their application was not processed.

Moreover, the Heirs of Venturillo allegedly failed to comply with the indispensable requirement of filing a motion for reconsideration before they sought recourse to this Court via a petition for certiorari. Neither did they file an appeal of the trial court's final Order.

The Heirs of Venturillo filed a Reply[6] dated December 15, 2003 reiterating their arguments.

In the Resolution[7] dated May 19, 2004, the parties were required to file their respective memoranda. Thus, respondent filed a Memorandum[8] dated July 15, 2004, while the Heirs of Venturillo filed their Memorandum[9] on September 21, 2004.

The general rule is that the remedy to obtain reversal or modification of a judgment on the merits is appeal. This is true even if the error ascribed to the court which rendered judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision.[10]

In this case, the Heirs of Venturillo received the assailed Order of the trial court on April 25, 2003. They therefore had 15 days from this date, or until May 10, 2003, within which to file an appeal to the Court of Appeals under Rule 41 of the 1997 Rules of Civil Procedure (Rules of Court) or a petition for review on certiorari to this Court under Rule 45 of the same rules. However, availing of a petition for certiorari under Rule 65 of the Rules of Court, the Heirs of Venturillo filed their petition only on May 12, 2003. It is axiomatic that the special civil action of certiorari cannot be used as a substitute for the lost or lapsed remedy of appeal.[11]

Assuming that the Heirs of Venturillo have a cause of action ripe for the extraordinary writ of certiorari, they disregarded the hierarchy of courts when they directly filed their petition with this Court. Considering that the special civil action of certiorari under Rule 65 of the Rules of Court is within the concurrent original jurisdiction of the Supreme Court and the Court of Appeals, the petition should have been initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts.[12]

Moreover, the Heirs of Venturillo failed to file a motion for reconsideration of the trial court's Order, depriving the latter of the opportunity to correct any factual or fancied error attributed to it by way of re-examination of the legal and factual aspects of the case. Rule 65 of the Rules of Court requires that petitioner be left with "no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." [13]

A motion for reconsideration is a plain, speedy, and adequate remedy. The filing thereof is a condition precedent in order that a petition for certiorari may be given due course.[14]

Nonetheless, in view of the wide breadth of discretion granted in certiorari proceedings in the interest of substantial justice and to prevent a substantial wrong,[15] we received the merits of the case.

The Heirs of Venturillo, through their parents, have continuously possessed and occupied the land on which the house sought to be refurbished stands since 1942. This possession was with the tacit consent and authorization of the City Government. In fact, the City Assessor's office directed the Venturillos to file tax declarations and pay real property taxes thereon which they have consistently complied with.

In *Estate of Gregoria Francisco v. Court of Appeals*, [16] the municipal mayor of Isabela, Basilan ordered the summary demolition, without judicial authority, of quonset building which stood on a lot owned by the Philippine Ports Authority. The municipal mayor justified the demolition as an exercise of police power and for reasons of health, safety and general welfare.

The Court awarded just compensation the amount of which was for the trial court to determine in favor of the petitioner whose building was demolished by the municipality even before a proper tribunal could decide whether or not the building constituted a nuisance in law. The ruling was premised on the ground that the owner of the building was in lawful possession of the lot and the building by virtue of the permit from the authorized government agency when the demolition was affected.

In the same vein, by virtue of the City Government's tacit consent, the Heirs of Venturillo are not squatters on public land but are in lawful possession thereof, including the house subject of the summary demolition order of respondent City Engineer. The Heirs of Venturillo have a right not to be disturbed in their lawful possession of the property until the trial court has finally settled the present controversy. It was for this reason that we directed the parties to maintain the status quo in our Resolution [17] dated May 15, 2003.

The remedy of mandamus lies to compel the performance of a ministerial duty.[18] A purely ministerial act or duty, in contradistinction to a discretionary act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public

officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial.[19]

The issuance of a building permit may be considered a ministerial duty only when the application and the plans are in conformity with the requirements of zoning and land use, lines and grades, structural design, sanitary and sewerage, environmental health, electrical and mechanical safety as well as with other rules and regulations promulgated in accordance with the provisions of the National Building Code.[20]

In this case, the Heirs of Venturillo complied with all the requirements for the procurement of a building permit enumerated under the National Building Code, such as the description of the work to be covered by the permit applied for; description and ownership of the lot on which the proposed work is to be done; the use or occupancy for which the proposed work is intended; estimated cost of the proposed work; and the plans and specifications prepared, signed and sealed by a duly licensed engineer.[21] They also paid the requisite fees for the application.[22]

Having done so, it became incumbent upon respondent City Engineer at that point to issue the building permit applied for. However, there is a dimension to this case which necessitates a more thorough review, one that the trial court, by improvidently dismissing the petition filed by the Heirs of Venturillo, failed to appreciate. In this failure lies its grave abuse of discretion.

Respondent City Engineer's refusal to issue the building permit and concomitant order for the Heirs of Venturillo to cause the demolition of their house or else the same shall be summarily demolished[23] are premised on the fact that the house which the Heirs of Venturillo intended to refurbish stands in the middle of the proposed extension of Mt. Mayon Street, an area which had been declared as a road right-of-way by the City Government.

It should be emphasized, however, that although the land in question has been characterized as public land, its actual ownership, i.e., whether it is owned by the National Government or by the City Government, is uncertain.

If the National Government owns the land, the City Government will have to undertake the necessary measures to obtain authority to use the land as a city road. Unless this is accomplished, the City Engineer has the ministerial duty to issue the building permit applied for. If, on the other hand, the City Government owns the land, its right to use it as a street extension is beyond question. By this token, its right to withhold the issuance of a building permit over a structure that lies right in the middle of the street which it will use as an extension, such as the residence in this case, cannot be assailed.

Because of these factual considerations, we cannot finally adjudicate the respective rights of the parties. The records are inadequate for purposes of arriving at a fair and complete resolution of the petition. Any attempt at this point to dispense with the basic issue given the scantiness of the evidence before us could result in grave injustice to the parties in this case.

WHEREFORE, the Order dated April 22, 2003 of the Regional Trial Court of Davao City, Branch 15, is ANNULLED and SET ASIDE. The instant petition is REMANDED for the reception of additional evidence and the resolution of the issues of the case in accordance with this Decision. The parties are directed to maintain the status quo as set out in the Resolution dated May 15, 2003 until further orders.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 132-139.

[2] Id. at 137-139.

[3] Id. at 137-138.

[4] Id. at 139.

[5] Id. at 144-150.

[6] Id. at 159-171.

[7] Id. at 177-178.

[8] Id. at 186-195.

[9] Id. at 212-228.

[10] Association of Integrated Security Force of Bislig v. Court of Appeals, G.R. No. 140150, August 22, 2005; 467 SCRA 483; Sawadjaan v. Court of Appeals, G.R. No. 141735, June 8, 2005, 459 SCRA 516.

[11] New Ever Marketing, Inc. v. Court of Appeals, G.R. No. 140555, 463 SCRA 284, July 14, 2005; Victoria v. Court of Appeals, G.R. No. 147550, January 26, 2005, 449 SCRA 319.

[12] Honoridez v. Mahinay, G.R. No. 153762, August 12, 2005, 466 SCRA 646.

[13] RULES OF COURT, Rule 65, Sec. 1.

[14] Davao New Town Development Corporation v. Commission on the Settlement of Land Problems, G.R. No. 141523, June 8, 2005, 459 SCRA 491.

[15] Drilon v. Court of Appeals, G.R. No. 106922, April 20, 2001, 357 SCRA 12.

[16] G.R. No. 95279, July 25, 1991, 199 SCRA 595.

[17] Supra note 2.

[18] Carpo v. Chua, G.R. Nos. 150773 and 153599, September 30, 2005, 471 SCRA 471.

[19] Symaco v. Aquino, 106 Phil. 1130 (1960).

[20] Director of Lands v. Court of Appeals, 133 Phil. 216 (1968); See also BUILDING CODE, Ch. 3, Secs. 303-304.

[21] BUILDING CODE, Sec. 302.

[22] Records, pp. 34-49; Annexes "K" to "T" (inclusive of sub-markings) of the Petition.

[23] RTC Records, p. 51; Order of Removal dated January 8, 2003.

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