

NESTORIO W. LAYA AND RUDY MARTIN, PETITIONERS, VS. SPOUSES EDWIN AND LOURDES TRIVIÑO, RESPONDENTS.

G.R. No. 158965. April 14, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Assailed in the present Petition for Review on Certiorari under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 66923 promulgated on September 27, 2002; and the CA Resolution[2] dated July 4, 2003, denying petitioners' Motion for Reconsideration.

The antecedents of the case, as summarized by the CA, are as follows:

Petitioners [herein respondents] Edwin and Lourdes Triviño are the registered owners of a residential unit within the La Pacita Complex Subdivision, San Pedro, Laguna.

Since 1987, said spouses are utilizing a portion of their residence as a mini-grocery store. By the year 2000, the store had occupied more than half of their house, hence, the Triviños saw the need to renovate the same.

Corollarily, petitioners [herein respondents] applied for a building permit with the Office [of the] Zoning Administrator Pablito Tolentino who issued a Zoning Certification dated 21 June 2000. In addition, the Triviños had secured the following documents/permits before they started the construction, to wit:

- A Certification/Endorsement dated 05 June 2000 from Mr. Danilo Berciles, the Board Chairman and President of Pacita Complex I Homeowners Association, Inc. interposing no objection to a house construction;
- Construction Clearance/Certification dated 05 June 2000 from the Barangay Chairman, Norvic D. Solidum interposing no objection to house construction;
- Tax Declaration No. 17-29691 on Lot 1, Blk. 1 of Mr. Trivino; and
- Endorsement Letter dated 21 June 2000 from the Inspector of the San Pedro Fire Station to the Building interposing no objection to the proposed construction.

On 11 July 2000, private respondents [which include herein petitioners], who are the homeowners of the said subdivision, wrote Mayor Felicisimo Vierendeza expressing their objection to the construction. They claimed that the building permit granted to the petitioners [herein respondents] was in violation of the San Pedro Zoning Ordinance enacted in March 1982.

On 29 July 2000, private respondents [which include herein petitioners] received a copy of the Zoning Certification issued in favor of the Triviños. However, instead of filing an appeal to the Local Zoning Board of Appeal, private respondents [which include herein petitioners] chose to pursue their complaint at the Office of the Municipal Mayor.

On 12 January 2001, after realizing the futility of the Complaint before the Mayor's Office, private respondents [which include herein petitioners] instituted a Petition/Appeal With Urgent Prayer For A Cease And Desist Order

(docketed as RIV6-012601-1512) before the public respondent HLURB averring as follows:

"2.1

The construction of a commercial building in an RI residential area is strictly prohibited under the Zoning Ordinance promulgated by the Sangguniang Bayan of San Pedro, Laguna. The Avowed purpose of the prohibition is to maintain the peace and quiet of the area;

2.2

Our subdivision is classified as an RI district or low density residential zone. This can be verified in the Official Zoning Map, x x x;

2.3

As we have consistently raised in our objection before the Mayor's Office and the deputized Zoning Administrator, Engr. Tolentino, the proposed commercial building, once completed, will create tremendous problems to the residents of our subdivision, not only in terms of traffic congestion, but also, its effect on environmental sanitation and noise and other pollution.

x x x x

On 16 February 2001, the Regional Field Office No. IV of HLURB promulgated an Order dismissing the appeal for lack of merit.

Undaunted, private respondents [which include herein petitioners], on 05 March 2001, filed a Verified Petition for Review with the Office of the Board of Commissioners of HLURB [docketed as HLURB Case No. REM-A-010320-0091] insisting that the construction of the building, being commercial in use and located in a residential zone, violates the pertinent provisions of the Zoning Ordinance of San Pedro, Laguna.

On 18 April 2001, public respondent HLURB issued a Temporary Restraining Order commanding petitioner[s] [herein respondents] to temporarily cease and desist from proceeding with any construction works for a period of twenty (20) days.

The temporary restraining order was made permanent by the respondent HLURB on 30 May 2001 as evidenced by the herein assailed Order.[3]

The dispositive portion of the May 30, 2001 Order of the Housing and Land Use Regulatory Board (HLURB) Board of Commissioners reads:

WHEREFORE, premises considered, respondents and all other persons acting under their control or direction are hereby ENJOINED pending resolution of the main complaint from using the newly constructed premises for commercial activities other than those previously existing and on a scale engaged in prior to the renovation of the building and deemed compatible with the character of the area as a low-[density] residential zone conditioned upon the posting by complainants [herein petitioners] of an injunction bond in the amount of One Hundred Thousand Pesos (P100,000.00) within ten (10) days from receipt of this Order. Non-filing of said bond shall result in the automatic lifting of this injunction.

SO ORDERED.[4]

Respondents filed a Motion for Reconsideration of the May 30, 2001 HLURB Order but the same was denied.

Respondents then filed a special civil action for certiorari with the CA contending that both the HLURB Regional Field Office and the HLURB Board of Commissioners did not acquire jurisdiction over the case.

On September 27, 2002, the CA promulgated the presently assailed Decision with the following dispositive portion:

WHEREFORE, premises considered, the Petition is GRANTED and the 30 May 2001 Order of the respondent Commission is hereby SET ASIDE. Consequently, HLURB Case No. REM-A-10320-0091 is also ordered DISMISSED for lack of merit.

SO ORDERED.[5]

Petitioners filed a Motion for Reconsideration but the CA denied it via its Resolution dated July 4, 2003.

Hence, the present petition with the following assignment of errors:

I

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE PETITION (RIV6-012601-1512) FILED BY PETITIONERS WITH THE HLURB REGIONAL FIELD OFFICE IV WAS LODGED IN THE WRONG FORUM, THEREFORE NO JURISDICTION AND BEYOND THE REGLEMENTARY PERIOD OF THIRTY (30) DAYS AS REQUIRED BY SECTION 6, ARTICLE X OF THE ZONING ORDINANCE OF SAN PEDRO, LAGUNA;

II

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE PETITIONERS CHALLENGED THE ZONING CERTIFICATION ONLY ON 12 JANUARY 2001 OR AFTER MORE THAN FIVE (5) MONTHS AFTER RECEIPT OF THE NOTICE;

III

THE COURT OF APPEALS GRAVELY ERRED IN CONCLUDING THAT THE FILING OF RIV6-012601-1512 IS AN AFTERTHOUGHT;

IV

THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE DECISION OF THE ZONING ADMINISTRATOR HAS BECOME FINAL AND EXECUTORY;

V

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE PETITIONERS FAILED TO PROVE THAT THE CONSTRUCTION IS IN VIOLATION OF THE ZONING ORDINANCE OF SAN PEDRO.[6]

Petitioners claim that respondents are estopped from questioning the jurisdiction of the HLURB because they never questioned such jurisdiction during the proceedings before the Regional Field Office of the HLURB, where they obtained a favorable judgment; and that it was only when the HLURB Board of Commissioners issued its May 30, 2001 Order that petitioners questioned the jurisdiction of the HLURB.

Petitioners contend that pursuant to the provisions of Executive Order No. 648 which was promulgated on February 7, 1981, the Human Settlements Regulatory Commission (now HLURB) has jurisdiction to take cognizance of their petition/appeal.

Petitioners further aver that the Zoning Certification issued by the Zoning Administrator is not the Certificate of

Zoning Compliance contemplated and required under the Zoning Ordinance of San Pedro, Laguna and which is appealable to the Local Zoning Board. As such, petitioners maintain that the remedy of appeal, including the prescriptive period provided for under the subject Ordinance, is not applicable.

Petitioners also contend that at the time their petition was filed with the HLURB, there is no existing Zoning Appeals Board and in such a case, Section 8 of the Zoning Ordinance provides that appeals from decisions of the Zoning Administrator shall be made directly with the HLURB.

Petitioners further argue that even assuming that the decision of the Zoning Administrator to issue a Zoning Certification could have been appealed, such decision could not have become final and executory in view of the Zoning Administrator's issuance of a Work Stoppage Order on August 25, 2000, which was never lifted, directing herein respondents to stop their construction activities until they have settled the complaints of herein petitioners.

Petitioners also contend that the burden of proof is on the respondents to show that the construction they have undertaken falls under any of the exceptions to the prohibitions under the subject Zoning Ordinance.

Respondents counter that it is clear that under the applicable municipal ordinance of San Pedro, Laguna, the reglementary period for filing an appeal from the issuance of a Zoning Certification by the Office of the Zoning Administrator is 30 days from receipt of notice of such issuance or certification; that respondents admit having received notice of the subject Zoning Certification on July 29, 2000, and that it was only on January 12, 2001 that they filed their petition/appeal with the Regional Field Office of HLURB; and that petitioners' petition/appeal was filed out of time. In addition, respondents aver that petitioners should have filed a Notice of Appeal with the Zoning Administrator and not a petition/appeal with the HLURB Regional Field Office. Respondents contend that appeal is a statutory privilege and it must be exercised within the period and in the manner provided by law.

Lastly, respondents contend that the CA did not commit error in dismissing HLURB Case No. REM-A-010320-0091 (RIV6-012601-1512) since petitioners failed to prove that the construction undertaken by respondents is in violation of the Zoning Ordinance of San Pedro, Laguna.

The Court finds the petition meritorious.

As to the first assigned error, respondents raised the issue of lack of jurisdiction only in their Comment and/or Opposition to the Petition for Review filed with the HLURB Board of Commissioners. After participating in all stages of the case before the Regional Field Office of the HLURB, respondents are effectively barred by estoppel from challenging its jurisdiction. While it is a rule that a jurisdictional question may be raised any time, this, however, admits of an exception where, as in this case, estoppel has supervened.[7]

Assuming that petitioners' petition/appeal with the HLURB Regional Field Office was filed out of time and before the wrong forum, respondents should have pointed out these defects at the earliest opportunity instead of actively participating in several stages of the proceedings before the Regional Field Office and discussing the case on its merits. It is settled that the active participation of a party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction.[8] In the instant case, respondents cannot belatedly reject or repudiate the jurisdiction of the HLURB Regional Field Office after voluntarily submitting to it. They never questioned the jurisdiction of the said Office despite several opportunities to do so. It was only when petitioners appealed the decision of the Regional Field Office with the HLURB Board of Commissioners did respondents raise such question. Respondents are already estopped from doing so.

Respondents also question the jurisdiction of the HLURB Board of Commissioners. However, it is clear that

under the law, the Board of Commissioners has competent jurisdiction to take cognizance of the Verified Petition for Review filed by petitioners and to issue orders in the exercise of such jurisdiction owing to its authority to determine appeals from decisions of its Regional Offices.

As correctly pointed out by petitioners, among the powers and duties of the HLURB, as provided for, respectively, under Article IV, Section 5 (f) and (p) of E.O. No. 648, are to: 1) "[a]ct as the appellate body on decisions and actions of local and regional planning and zoning bodies and of the deputized officials of the Commission, on matters arising from the performance of these functions;" and 2) "[i]ssue orders after conducting the appropriate investigation for the cessation or closure of any use or activity and to issue orders to vacate or demolish any building or structure that is determined to have violated or failed to comply with any of the laws, presidential decrees, letters of instructions, executive orders and other presidential issuances and directives being implemented by it, either on its own or upon complaint of any interested party."

Moreover, Rule XII, Section 1 of the Rules of Procedure of the HLURB, as amended by Section 9 of HLURB Resolution No. R-655, Series of 1999,[9] specifically provides that decisions of a Regional Officer of the HLURB may be elevated for review before the Board of Commissioners, to wit:

Petition for Review. - Any party aggrieved by the decision of the Regional Officer, on any legal ground and upon payment of the review fee may file with the Regional Office a verified Petition for Review of such decision within thirty (30) calendar days from receipt thereof. In cases decided by the Executive Committee pursuant to Rule II, Section 2 of these Rules as amended, the verified petition shall be filed with the Executive Committee within thirty (30) calendar days from receipt of the Committee's decision. Copy of such petition shall be furnished the other party and the Board of Commissioners. No motion for reconsideration or mere notice of petition for review of the decision shall be entertained.

Within ten (10) calendar days from receipt of the petition, the Regional Officer, or the Executive Committee, as the case may be, shall elevate the records to the Board of Commissioners together with the summary of proceedings before the Regional Office. The petition for review of a decision rendered by the Executive Committee shall be taken cognizance of by the Board en banc.

Having concluded that respondents are estopped from questioning the jurisdiction of the HLURB Field Office and that the Board of Commissioners has power and authority to take cognizance of the Verified Petition for Review filed before it, this Court finds it no longer necessary to address the second, third and fourth issues raised in the present petition as the resolution of these issues hinges on the determination of the question whether the HLURB may decide the petition for review filed by respondents.

With respect to the last assigned error, the Court finds that this is one of the issues raised in the Verified Petition for Review filed by petitioners with the HLURB Board of Commissioners, which is pending resolution by the said Board. Moreover, the issue involves a determination of factual matters, which would determine whether or not the provisions of the subject Zoning Ordinance have been complied with, which, generally, is beyond the province of this Court. Hence, this issue must first be settled by the HLURB.

WHEREFORE, the instant petition is GRANTED. The September 27, 2002 Decision and July 4, 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 66923 are REVERSED and SET ASIDE. The Order of the HLURB Board of Commissioners dated May 30, 2001 is REINSTATED and the Board is ORDERED to proceed with reasonable dispatch in hearing the merits of petitioners' Verified Petition For Review.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Nachura, and Leonardo-De Castro, JJ., concur.

* In lieu of Justice Ruben T. Reyes, per Raffle dated April 2, 2008.

[1] Penned by Justice Andres B. Reyes, Jr. with the concurrence of Justices Ruben T. Reyes (now a member of this Court) and Danilo B. Pine, rollo, pp. 8-18.

[2] Id. at 20.

[3]CA rollo, pp. 253-256.

[4] Id. at 20.

[5] CA rollo, p. 262.

[6] Rollo, p. 33.

[7] David v. Cordova, G.R. No. 152992, July 28, 2005, 464 SCRA 384, 401.

[8]Heirs of the Late Panfilo V. Pajarillo v. Court of Appeals, G.R. Nos. 155056-57, October 19, 2007.

[9]Issued by the HLURB Board of Commissioners on December 15, 1999.

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