

**ZENAIDA ORTEGA, REPRESENTED BY HER ATTORNEY-IN FACT
OCTAVIO ALVAREZ AND/OR ZEMVE ORTEGA ALVAREZ,
PETITIONERS, VS. THE QUEZON CITY GOVERNMENT, THE
NATIONAL HOUSING AUTHORITY & TH...**

G.R. NO. 161400. September 02, 2005

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioner Zenaida Ortega comes directly to this Court assailing the validity of Quezon City Ordinance No. SP 1304, Series of 2003, and praying that the following agencies, National Housing Authority (NHA), Housing and Land Use Regulatory Board (HLURB), Department of Environment and Natural Resources – Bureau of Land Management, National Home Mortgage Financing Corporation, and Home Insurance Guarantee Corporation, be restrained from implementing the said ordinance.

Proposed Ordinance No. 2002-07 (PO 2002-07) was filed on January 10, 2002 before the City Council. PO 2002-07 sought to approve "the Subdivision Plan of Samahang Kapitbahayan ng Barangay Vasra (Samahang Kapitbahayan), a Socialized Housing Project (B.P. Blg. 220) with seventeen (17) lots (Community Mortgage Program) containing [a total] area of Six Hundred Sixty Seven (667) square meters, covered by Original Certificate of Title No. 735, owned by the City Government of Quezon City (Vendor) located at a portion of [an] easement [in] Barangay Vasra, Quezon City, Metro Manila, as applied for by the Samahang Kapitbahayan ng Barangay Vasra (Vendee) subject to the conditions prescribed under Quezon City Ordinance No. SP-56, S-93 and Batas Pambansa Blg. 220."[1]

Proposed Resolution No. 2003-13 (PR 2003-13) was subsequently filed on January 20, 2002 to complement PO 2002-07. The proposed resolution sought to authorize Quezon City Mayor Feliciano R. Belmonte to enter into a contract to sell a portion of an easement located at Barangay Vasra, Quezon City with the SAMAHANG KAPITBAHAYAN to be represented by its President, through the Community Mortgage Program (CMP) of the National Home Mortgage Finance Corporation (NHMFC).[2]

On August 5, 2003, the Quezon City government enacted Ordinance No. SP-1304, Series of 2003 (the ordinance), which is being challenged in the present petition,[3] reclassifying "as residential or converted from its original classification to residential for distribution or for sale to its informal settlers" a "parcel of land which may be considered an accretion/excess lot and previously conceived and referred to in Proposed Ordinance No. 2002-07 and Proposed [Resolution] 2002-13 as portion of [an] easement situated between Block 14, Psd-39577 of the original subdivision plan and Culiati Creek, Barangay Vasra, Quezon City."[4]

The provisions of the assailed ordinance read:

SECTION 1. A parcel of land which may be considered an accretion/excess lot and previously conceived and referred to in proposed ordinance no. PO 2002-07 and proposed ordinance no. PO 2002-13 as portion of easement, situated between Block 14. Psd-39577 of the original subdivision plan and Culiati Creek, Barangay

Vasra, Quezon City, is hereby classified as residential or converted from its original classification to residential for distribution or for sale to its informal settlers.

SECTION 2. This Ordinance shall take effect immediately upon its approval.[5]

Petitioner, who claims to be the rightful owner of the land subject of the ordinance, alleges that in enacting the ordinance, her various letter-protests to the City Council against proposed Resolutions No. 2002-13, 2002-07 and 2002-239[6] were not heeded in the City Council, thus violating her constitutional rights to due process and equal protection of the law.

Petitioner further claims that the lot referred to in the ordinance overlaps her properties as their technical descriptions in Transfer Certificates of Title Nos. RT-70472 (296026) and N-152137 issued in her name show;[7] and that assuming that there exists accretion or easement of the Culiati Creek, she, being the owner of the adjoining land, is the rightful owner thereof following Articles 457[8] and Article 620[9] of the Civil Code.

Petitioner likewise claims that the intended beneficiaries under the proposed ordinance and resolution are not informal settlers as required under City Ordinance No. SP-56, Series of 1993,[10] but lessees of her properties who had been ordered ejected after she filed several unlawful detainer cases against them.[11]

By Comment[12] filed on April 14, 2004, the Quezon City Government, through the Office of the City Attorney, alleges that the present petition is premature and raises questions of fact which entail reception of evidence; and that petitioner has not yet established her right of ownership over the property referred to in the ordinance, whereas its clear right thereover is evidenced by Original Certificate of Title No. 735 issued in its name.[13]

The NHA, by Comment[14] filed on May 17, 2004, prayed for the dismissal of the petition, pointing out that the petition is actually one for declaratory relief under Section 1, Rule 63 of the Rules of Court over which this Court has no original jurisdiction.

The NHMFC, by Comment[15] filed on June 17, 2004, alleged that it is not a party to any of the transactions with any of the parties in the present case. It nevertheless adopted the comment of the Quezon City government that the petition is premature and alleges facts which still need to be proven.[16]

The petition must be dismissed.

Article VIII, Section 5 of the Constitution provides:

SECTION 5. The Supreme Court shall have the following powers:

x x x

(2) Review, revise, reverse, modify, or affirm on appeal or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

(a) 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.

x x x (Emphasis and underscoring supplied).

This Court can thus only review, revise, reverse, modify on appeal or certiorari final judgments and orders of lower courts in all cases in which the constitutionality or validity of, among other things, an ordinance is in question. Foremost, therefore, is that there must be first a final judgment rendered by an inferior court[17] before this Court can assume jurisdiction over a case of this nature.

Verily, this Court does not conduct original and full trial of a main factual issue like what petitioner is raising in

the present petition.[18] It does not analyze or weigh evidence brought before it at the first instance, otherwise, it would preempt the primary function of the lower court to try the case on the merits, receive evidence, and decide the case definitively.[19] Its jurisdiction in cases which assail the validity of an ordinance is limited to reviewing or revising final judgments or orders of lower courts and applying the law based on their findings of facts brought before it.[20]

In another vein, if this petition was to be considered as one for declaratory relief, as observed by the OSG, it is not embraced within the original jurisdiction of this Court.[21] Rule 63 of the Rules of Court provides:

SECTION 1. Who may file petition. Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other government regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising from, and for a declaration of his rights or duties, thereunder.

An action for the reformation of an instrument, or to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code may be brought under this Rule.

x x x

SEC. 4. Local government ordinances. – In any action involving the validity of a local government ordinance, the corresponding prosecutor or attorney of the local government unit involved shall be similarly notified and entitled to be heard. (Emphasis and underscoring supplied)

Respecting petitioner's contention that since the ordinance violates national laws, the present petition delves on questions of law over which this Court has original jurisdiction,[22] the same fails.

As reflected above, petitioner's assertion that the invalidity of the ordinance is premised on her claim that she has a better right to the parcel of land referred to in the ordinance is a factual issue.

At all events, even if this petition delves on questions of law, there is no statutory or jurisprudential basis for according to this Court original and exclusive jurisdiction over declaratory relief which advances only questions of law.[23]

Finally, while a petition for declaratory relief may be treated as one for prohibition if it has far reaching implications and raises questions that need to be resolved,[24] there is no allegation of facts by petitioner tending to show that she is entitled to such a writ. The judicial policy must thus remain that this Court will not entertain direct resort to it, except when the redress sought cannot be obtained in the proper courts or when exceptional and compelling circumstances warrant availment of a remedy within and calling for the exercise of this Court's primary jurisdiction.[25]

WHEREFORE, the petition is hereby DISMISSED.

Costs against the petitioner.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Callejo, Sr., Azcuna, Tinga, Nazario, and Garcia, JJ., concur.
Ynares-Santiago, J., on leave.

[1] Rollo at 18.

[2] Id. at 20.

[3] Entitled "An Ordinance Reclassifying a Parcel of Land which may be Considered as an Accretion/Excess Lot and Previously Conceived and referred to in Proposed Ordinance No. 2002-07 and Proposed [Resolution] No. 2002-13 as Portion of Easement, situated between Block 14, PSD-39577 of the Original Subdivision Plan and Culiati Creek, Barangay Vasa, Quezon City, as Residential or Converting the same parcel of land from its Original Classification to Residential for Distribution or for Sale to its Informal Settlers therein."

[4] Rollo at 16.

[5] Id. at 17.

[6] Id. at 5-6. Petitioner avers that she sent the following letters to the Quezon City Council: (1). Letter protest dated January 21, 2002 against the proposed Resolutions No. 2002-13, 2002-07 and 2002-239, wherein she annexed certified copies of her Transfer Certificate of Titles to prove her ownership of the land; (2). Position papers dated June 10, 2002 invoking her right as owner of accretion, if any, under RA 457 (riparian rights) and Article 620 (prescription rights) and presenting documents proving that the purported "awardees" are not informal settlers; (3) Letter protest dated December 12, 2002 enclosing copies of documents that the purported awarded admitted that they are lessees and therefore not informal settlers. Attached therewith is a report of Urban Poor Affairs Office disclosing that the "awardees" are not informal settlers; (4). Protests dated October 27, 2003 submitted by 20 neighboring families who were excluded by the City Ordinance; (5). Second protest dated November 19, 2003 by 20 families reiterating their denunciations of the illegal awards to syndicated and professional squatters; (6) Letter appeal addressed to Councilwoman Wilma Darino dated November 19, 2003.

[7] Rollo at 38-39.

[8] Article 457. To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters.

[9] Article 620. Continuous and apparent easements are acquired either by virtue of a title or by prescription of ten years.

[10] Rollo at 8.

[11] Id. at 41-44.

[12] Id. at 73-77.

[13] Id. at 74-75.

[14] Id. at 82-88.

[15] Id. at 98-101.

[16] Id. at 99-100.

[17] *Darnoc Realty Devt. Corp. v. Ayala Corporation*, 117 SCRA 538, 542 (1982).

[18] *Lingner & Fisher GMBH v. Intermediate Appellate Court*, 125 SCRA 522, 527 (1983).

[19] *New Owners/Management of TML Garments, Inc. v. Zaragoza*, 170 SCRA 563, 568 (1989).

[20] *Blue Bar Coconut Philippines v. Tantuico, Jr.*, 163 SCRA 716, 727 (1988).

[21] *Rural Bank of Olongapo, Inc. v. Commissioner of Land Registration*, 102 SCRA 794, 795 (1981); *Alliance*

of Government Workers v. Minister of Labor and Employment, 124 SCRA 1, 10 (1983).

[22] Rollo at 92-93.

[23] Alliance of Government Workers v. Minister of Labor and Employment, 124 SCRA 1, 10 (1983).

[24] Macasiano v. National Housing Authority, 224 SCRA 236, 243 (1993).

[25] John Hay Peoples Alternative Coalition v. Lim, 414 SCRA 356, 369 (2003).

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