

ALFREDO T. ROMUALDEZ, PETITIONER, VS. THE HONORABLE SANDIGANBAYAN (THIRD DIVISION) AND THE REPUBLIC OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 161602. July 13, 2010

Ponente: ABAD, J.

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ABAD, J.:

This case is about the Ombudsman's authority to conduct preliminary investigation in a forfeiture case where the petitioner allegedly amassed ill-gotten wealth before February 25, 1986.

The Facts and the Case

On March 6, 1996 respondent Republic of the Philippines (Republic) filed an action for the forfeiture of alleged unlawfully acquired property with the Sandiganbayan in Civil Case 0167 against petitioner Alfredo T. Romualdez and his wife Agnes Sison Romualdez as well as against Romson Realty, Inc., R & S Transport, Inc., Fidelity Management, Inc., and Dio Island Resort, Inc. (collectively, the Romualdezes) pursuant to Republic Act (R.A.) 1379.[1]

On January 16, 2000 the Romualdezes filed a motion to dismiss the action on grounds of a) violation of their right to a speedy disposition of their case; b) lack of jurisdiction of the Sandiganbayan over the action; c) prematurity; d) prescription; and e) *litis pendencia*. On September 11, 2002 the Sandiganbayan denied the motion. It also denied on March 10, 2003 their subsequent motion for reconsideration.

On March 31, 2003 the Romualdezes next filed a motion for preliminary investigation and to suspend proceedings.[2] They claim that since Civil Case 0167 was a forfeiture proceeding filed under R.A. 1379, the Ombudsman should have first conducted a "previous inquiry similar to preliminary investigations in criminal cases" before the filing of the case pursuant to Section 2 of the law.[3]

In its Comment[4] on the motion, the Republic pointed out that the Office of the Ombudsman in fact conducted such a preliminary investigation in 1991 in OMB-0-91-0820[5] and issued on January 22, 1992 a resolution, recommending the endorsement of the matter to the Office of the Solicitor General (OSG) for the filing of the forfeiture case.

On August 13, 2003 the Sandiganbayan issued a resolution,[6] denying the Romualdezes' March 31, 2003 motion. It also denied by resolution on December 3, 2003 their subsequent motion for reconsideration.[7] Thus, the Romualdezes filed the present petition for certiorari and prohibition, seeking to annul the Sandiganbayan's rulings and prevent it from further proceeding with Civil Case 0167 until another preliminary investigation is conducted in their case.

The Question Presented

The sole question presented in this case is whether or not the preliminary investigation that the Ombudsman

conducted in OMB-0-91-0820 in 1991 satisfied the requirement of the law in forfeiture cases.

The Ruling of the Court

The Romualdezes point out that the Office of the Ombudsman should not have conducted an investigation of their case, since its authority to investigate ill-gotten or unexplained wealth cases pertained only to wealth amassed after February 25, 1986 and not before that date.[8] Since the Romualdezes acquired the allegedly ill-gotten wealth involved in their case as early as 1970, then the Ombudsman had no authority to conduct the investigation that it did in OMB-0-91-0820. In the absence of a prior valid preliminary investigation, the forfeiture proceedings in Civil Case 0167 cannot continue.

In addition, the Romualdezes insist that it was improper for the Ombudsman to have conducted its investigation in their absence. The spouses Alfredo and Agnes Romualdez were in the United States when that investigation took place. They were thus denied their right to be heard in that investigation.

But, as the Sandiganbayan correctly pointed out, quoting *Republic v. Sandiganbayan*,[9] the Ombudsman has under its general investigatory powers the authority to investigate forfeiture cases where the alleged ill-gotten wealth had been amassed before February 25, 1986. Thus:

Nonetheless, while we do not discount the authority of the Ombudsman, we believe and so hold that the exercise of his correlative powers to both investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth is restricted only to cases for the recovery of ill-gotten and/or unexplained wealth which were amassed after February 25, 1986. Prior to said date, the Ombudsman is without authority to initiate such forfeiture proceedings. We, however, uphold his authority to investigate cases for the forfeiture or recovery of such ill-gotten and/or unexplained wealth amassed even before the aforementioned date, pursuant to his general investigatory power under Section 15(1) of Republic Act No. 6770.[10] (Emphasis supplied)

And, although it was the Ombudsman who conducted the preliminary investigation, it was the OSG that instituted the action in Civil Case 0167 in line with the Court's ruling in the above-cited *Republic* and other cases that followed.

The Court cannot also subscribe to the Romualdezes' claim that they are entitled to a new preliminary investigation since they had no opportunity to take part in the one held in 1991, in OMB-0-91-0820. They admit that the subpoena for that investigation had been sent to their last known residence at the time it was conducted.[11] The Republic categorically insists that the appropriate subpoena had been served on the Romualdezes.[12]

Actually, the lament of the spouses was that they left the Philippines because of danger to their lives after the EDSA revolution of February 1986 and so could not take part in the proceedings against them. While it is true that the Court characterized the departure of the Romualdezes as forced upon them by the uncertainty of the situation in 1986, it also said that such was the case only until things shall have stabilized.[13] The Court will take judicial notice of the fact that the people's ratification of the 1987 Constitution on February 2, 1987 signaled the return to normalcy of the political situation in the Philippines. Consequently, the Romualdezes had no valid excuse for not responding to the subpoena served on them at their last known address in 1991, which they do not deny having received.

The Ombudsman could not be faulted for proceeding with the investigation of the Romualdezes' cases when they did not show up despite notice being sent to them at their last known residence. As the Court held in a case:

The New Rules on Criminal Procedure "does not require as a condition sine qua non to the validity of the proceedings [in the preliminary investigation] the presence of the accused for as long as efforts to reach him

were made, and an opportunity to controvert the evidence of the complainant is accorded him. The obvious purpose of the rule is to block attempts of unscrupulous respondents to thwart the prosecution of offenses by hiding themselves or by employing dilatory tactics." [14]

In sum, no reason exists for suspending or interrupting the conduct of the forfeiture proceedings before the Sandiganbayan.

WHEREFORE, the Court DISMISSES the petition for lack of merit.

SO ORDERED.

Carpio, Villarama, Jr.,[*] Perez,**] and Mendoza, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 858 dated July 1, 2010.

[**] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 863 dated July 5, 2010.

[1] "An Act Declaring Forfeiture in Favor of the State of any Property Found to have been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings therefor."

[2] Rollo, pp. 62-68.

[3] Section 2. Filing of petition. Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed prima facie to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who shall conduct a previous inquiry similar to preliminary investigations in criminal cases and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: Provided, That no such petition shall be filed within one year before any general election or within three months before any special election.

The resignation, dismissal or separation of the officer or employee from his office or employment in the Government or in the Government-owned or controlled corporation shall not be a bar to the filing of the petition: Provided, however, That the right to file such petition shall prescribe after four years from the date of the resignation, dismissal or separation or expiration of the term of the office or employee concerned, except as to those who have ceased to hold office within ten years prior to the approval of this Act, in which case the proceedings shall prescribe after four years from the approval hereof. (Emphasis supplied)

[4] Rollo, pp. 71-73.

[5] "Presidential Commission on Good Government v. Alfredo Romualdez."

[6] Rollo, p. 31. Adopted and approved by Associate Justices Godofredo L. Legaspi, Raoul V. Victorino, and Norberto Y. Germaldez.

[7] Id. at 32-36. Penned by Associate Justice Godofredo L. Legaspi, and with the concurrence of Associate Justices Raoul V. Victorino and Norberto Y. Germaldez.

[8] Citing Section 15(1) of Republic Act 6770, Republic v. Sandiganbayan, G.R. No. 90529, August 16, 1991, 200 SCRA 667, 682-683.

[9] Id. at 667.

[10] Supra note 8.

[11] Rollo, p. 17.

[12] Id. at 147-148.

[13] Romualdez v. Regional Trial Court, Branch 7, Tacloban City, G.R. No. 104960, September 14, 1993, 226 SCRA 408, 415.

[14] Mercado v. Court of Appeals, 315 Phil. 657, 662 (1995).

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