THE CITY OF BAGUIO, MAURICIO DOMOGAN, AND ORLANDO GENOVE, PETITIONERS, VS. FRANCISCO NIÑO, JOSEFINA NIÑO, EMMANUEL NIÑO, AND EURLIE OCAMPO, RESPONDENTS.

G.R. NO. 161811. April 12, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The Bureau of Lands awarded on May 13, 1966 to Narcisa A. Placino (Narcisa) a parcel of land identified as Lot No. 10 (the lot) located at Saint Anthony Road, Dominican-Mirador Barangay, Baguio City.

Francisco Niño (Niño), one of the herein respondents, who has been occupying the lot, contested the award by filing a Petition Protest on December 23, 1975 before the Bureau of Lands.

The Director of Lands dismissed the Petition Protest by Order of November 11, 1976.

Niño appealed the dismissal all the way to the Supreme Court but he did not succeed.

The decision of the Director of Lands dated November 11, 1976 having become final and executory,[1] the then-Executive Director of the Department of Environment and Natural Resources-Cordillera Autonomous Region (DENR-CAR), on petition of Narcisa, issued an Order of Execution dated February 1, 1993 directing the Community Environment and Natural Resources Office (CENRO) Officer to enforce the decision "by ordering Petitioner Niño and those acting in his behalf to refrain from continuously occupying the area and remove whatever improvements they may have introduced thereto."[2]

Attempts to enforce the Order of Execution failed, prompting Narcisa to file a complaint for ejectment before the Baguio City Municipal Trial Court in Cities (MTCC). The MTCC dismissed Narcisa's complaint, however, by Order[3] of August 7, 1996.

Narcisa's counsel, Atty. Edilberto Claravall (Atty. Claravall), later petitioned the DENR-CAR for the issuance of a Special Order authorizing the City Sheriff of Baguio, the City Police Station, and the Demolition Team of the City Government to demolish or remove the improvements on the lot introduced by Niño. The DENR-CAR denied the petition, citing lack of jurisdiction over the City Sheriff of Baguio, the City Police Station, and the Demolition Team of the City Government. The DENR-CAR also invoked Section 14 (now Section 10 (d)) of Rule 39 of the Rules of Court.[4]

Atty. Claravall thereupon moved to have the Order of Execution previously issued by the DENR-CAR amended, which was granted. As amended, the Order of Execution addressed to the CENRO Officer read:

> WHEREFORE, pursuant to the provisions of Section 1844 of the Revised Administrative Code as amended by Act No. 3077, you are hereby enjoined to enforce the aforementioned order, with the assistance upon request of the City Sheriff of Baguio City, the Demolition Team of Baguio City and the Baguio City Police Station, by Ordering Petitioner Niño and those acting in his behalf to refrain from continuously occupying the area and remove whatever improvements they may have introduced thereto.

x x x x

SO ORDERED.[5] (Emphasis and underscoring supplied)

The DENR-CENRO, together with the Demolition Team of Baguio City and the Baguio City police, desisted, however, in their earlier attempt to enforce the Amended Order of Execution.[6]

On July 16, 1997, the Demolition Team of Baguio City headed by Engineer Orlando Genove and the Baguio City Police, on orders of then Baguio City Police Officer-In-Charge (OIC) Donato Bacquian, started demolishing the houses of Niño and his herein co-respondents.[7]

The demolition was, however, temporarily stopped upon the instructions of DENR-CENR Officer Guillermo Fianza, who later advised Niño that the DENR-CENRO would implement the Amended Order of Execution on August 4, 1997.[8]

Niño and his wife Josefina Niño thereupon filed a Petition[9] for Certiorari and Prohibition with Prayer for Temporary Restraining Order before the Regional Trial Court (RTC) of Baguio City against Guillermo Fianza, Teofilo Olimpo of the DENR-CENRO, Mayor Mauricio Domogan (hereafter petitioner), Atty. Claravall, Engr. Orlando Genove (hereafter petitioner), Rolando Angara, and Police Officer Donato Bacquian challenging the Amended Order of Execution issued by the DENR-CENRO.

The Niño spouses later filed an Amended Petition[10] by impleading Emmanuel Niño and Eurlie Ocampo as therein co-petitioners and the City of Baguio (hereafter petitioner) and Narcisa as therein additional respondents, and further praying for damages.

Branch 6 of the Baguio RTC dismissed the petition of Niño et al. (hereafter respondents) for lack of merit.[11] Respondents' Motion for Reconsideration[12] having been denied, they filed a Petition for Review[13] under Rule 42 of the Rules before the Court of Appeals.

By Decision[14] of December 11, 2002, the Court of Appeals granted the Petition for Review, holding that Sec. 10(d) of Rule 39 of the Rules reading:

SEC. 10. Execution of judgments for specific act.

x x x x

(d) Removal of improvements on property subject of execution. - When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court. (Underscoring supplied)

applies.

Thus disposed the appellate court:

WHEREFORE, the instant appeal is hereby GRANTED and the Orders dated September 24, 1997 and November 23, 1998 are hereby SET ASIDE. Public respondent City Mayor Mauricio Domogan thru the Demolition Team and City Engineer's Office are hereby ordered to cease and desist from enforcing the amended order of execution issued by Oscar N. Hamada, Regional Executive Director of the Department of Environmental and Natural Resources, concerning the demolition or removal of the structures made by petitioners until private respondent applied for a special order abovementioned with the proper court.

SO ORDERED.[15] (Underscoring supplied)

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Respondents filed before the appellate court an Ex-Parte Motion for Reconsideration[16] on January 9, 2003, alleging that some of the reliefs they prayed for in their petition were left unacted upon.[17] Petitioners too filed a Motion for Reconsideration[18] on January 28, 2003, raising the following grounds:

> - THE HONORABLE COURT FAILED TO CONSIDER THAT THE
>
> - THE HONORABLE COURT GRAVELY ERRED IN GIVING DUE COURSE TO THE PETITION FOR REVIEW;
>
> - THE HONORABLE COURT MISAPPLIED SEC. 10 (d), RULE 39 of the RULES OF COURT.[19] (Underscoring supplied)

In support of the first ground, petitioners raised before the appellate court, in their Motion for Reconsideration, for the first time, the power of the City Mayor to validly order the demolition of a structure constructed without a building permit pursuant to Sec. 455(b) 3(vi) of the Local Government Code of 1991 in relation to the National Building Code of the Philippines.

Alleging that respondents built their house without the required entry and building permits, petitioners argued that the City Mayor may order the demolition of a house without a special court order.[20]

The Court of Appeals denied both parties' motions for reconsideration by Resolution[21] of December 17, 2003.

Hence, the present petition of the City of Baguio, Mayor Domogan (now a Congressman), and Orlando Genove, faulting the appellate court:

> - . . .IN RULING THAT A SPECIAL COURT ORDER IS NEEDED FOR THE DEMOLITION OF RESPONDENTS' STRUCTURES;
>
> - . . . . IN APPLYING SEC. 10(d) RULE 39 OF THE RULES OF COURT IN THIS CASE;
>
> - . . . . IN ENTERTAINING RESPONDENTS' PETITION FOR REVIEW.[22]

The petition fails.

While it is noted that respondent's appeal to the Court of Appeals was erroneously brought under Rule 42 of the Rules of Court, instead of under Rule 41, the RTC having rendered the questioned decision in the exercise of its original, not appellate, jurisdiction, this Court overlooks the error in view of the merits of respondents' case.[23]

Petitioners' contention that the enforcement of the Amended Order of Execution does not need a hearing and court order which Sec. 10(d) of Rule 39 of the Rules of Court requires does not lie. That an administrative agency which is clothed with quasi-judicial functions issued the Amended Order of Execution is of no moment, since the requirement in Sec. 10 (d) of Rule 39 of the Rules of Court echoes the constitutional provision that "no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."[24]

Antipolo Realty Corporation v. National Housing Authority teaches:

> In general, the quantum of judicial or quasi-judicial powers which an administrative agency may exercise is defined in the enabling act of such agency. In other words, the extent to which an administrative entity may exercise such powers depends largely, if not wholly, on the provisions of the statute creating or empowering such agency.[25] (Underscoring supplied)

There is, however, no explicit provision granting the Bureau of Lands (now the Land Management Bureau) or the DENR (which exercises control over the Land Management Bureau) the authority to issue an order of

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demolition[26] " which the Amended Order of Execution, in substance, is.

Indeed,

> [w]hile the jurisdiction of the Bureau of Lands is confined to the determination of the respective rights of rival claimants to public lands or to cases which involve the disposition of public lands, the power to determine who has the actual, physical possession or occupation or the better right of possession over public lands remains with the courts.
>
> The rationale is evident. The Bureau of Lands does not have the wherewithal to police public lands. Neither does it have the means to prevent disorders or breaches of peace among the occupants. Its power is clearly limited to disposition and alienation and while it may decide disputes over possession, this is but in aid of making the proper awards. The ultimate power to resolve conflicts of possession is recognized to be within the legal competence of the civil courts and its purpose is to extend protection to the actual possessors and occupants with a view to quell social unrest.[27] (Emphasis added)

Consequently, this Court held:[28]

> x x x the power to order the sheriff to remove improvements and turn over the possession of the land to the party adjudged entitled thereto, belongs only to the courts of justice and not to the Bureau of Lands.[29] (Emphasis and underscoring supplied)

In fine, it is the court sheriff which is empowered to remove improvements introduced by respondents on, and turn over possession of, the lot to Narcisa.

Petitioners' invocation of the City Mayor's authority under Sec. 455(b) 3(vi) of the Local Government Code to order the demolition or removal of an illegally constructed house, building, or structure within the period prescribed by law or ordinance and their allegation that respondents' structures were constructed without building permits[30] were not raised before the trial court. Petitioners having, for the first time, invoked said section of the Local Government Code and respondents' lack of building entry permits in their Motion for Reconsideration of the Court of Appeals' decision, it was correctly denied of merit,[31] it being settled that matters, theories or arguments not brought out in the proceedings below will ordinarily not be considered by a reviewing court as they cannot be raised for the first time on appeal.[32]

WHEREFORE, the petition is DISMISSED. The questioned Decision and Resolution of the Court of Appeals are AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

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

[1] RTC records, pp. 8-9.

[2] Id. at 16.

[3] Id. at 8-11.

[4] Section 10(d) of Rule 39 reads:

> SEC. 10. Execution of judgments for specific act.
>
> x x x x

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> (d) Removal of improvements on property subject of execution. - When the property subject of the execution contains improvements constructed or planted by the judgment obligor or his agent, the officer shall not destroy, demolish or remove said improvements except upon special order of the court, issued upon motion of the judgment obligee after due hearing and after the former has failed to remove the same within a reasonable time fixed by the court.

[5] RTC records, pp. 17-18.

[6] Id. at 3.

[7] Ibid.

[8] Id. at 5.

[9] Id. at 1-7.

[10] Id. at 76-85.

[11] Id. at 140.

[12] Id. at 141-142.

[13] CA rollo, pp. 3-13.

[14] Penned by Court of Appeals Associate Justice Eugenio S. Labitoria, with the concurrence of Court of Appeals Associate Justices Renato C. Dacudao and Danilo B. Pine; id. at 68-74.

[15] Id. at 73.

[16] Id. at 75-80.

[17] Id. at 76-77.

[18] Id. at 82-87.

[19] Id. at 82.

[20] Id. at 82-84 [sic].

[21] Id. at 101-102.

[22] Rollo at 16.

[23] Vide Prudential Bank v. Business Assistance Group, Inc., G.R. No. 158806, December 16, 2004, 447 SCRA 187, 196 ("[T]his Court has consistently frowned upon the dismissal of an appeal on purely technical grounds."); Buenaobra v. Lim King Guan, G.R. No. 150147, January 20, 2004, 420 SCRA 359, 364.

> (It is true that the perfection of an appeal in the manner and within the period prescribed by law is not only mandatory but jurisdictional x x x . However, technicality should not be allowed to stand in the way of equitably and completely resolving the rights and obligations of the parties.);

Ong v. Tating, G.R. No. L-61042, April 15, 1987, 149 SCRA 265, 274

> (The mode by which the Tatings thus brought up to the Court of Appeals the adverse judgment of the CFI - i.e., by petition for review - was erroneous. This aspect of the case apparently escaped the Appellate Court's attention; it did not treat of it at all. This is however of no moment. The need of finally resolve [sic] this case makes this defect inconsequential. x x x).

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[24] CONSTITUTION, Art. III, Sec. 1; vide Bermudez v. Gonzales, G.R. No. 132810, December 11, 2000, 347 SCRA 611, 619-620; Manzano v. Court of Appeals, G.R. No. L-20815, May 19, 1965, 14 SCRA 27, 28-89; Cosme Oida Follosco v. Director of Lands, et. al., 92 Phil. 810, 816 (1953).

[25] Antipolo Realty Corp. v. National Housing Authority, G.R. No. L-50444, August 31, 1987, 153 SCRA 399, 407.

[26] Act No. 2711 (1917), Sec. 1844 and subsequent amendments; Executive Order 192 (1987), Sec. 15; Administrative Code, Title XIV.

[27] Solis v. Intermediate Appellate Court, G.R. No. 72486, June 19, 1991, 198 SCRA 267, 272. Vide Painaga v. Cortes, et. al, G.R. No. 53837, October 3, 1991, 202 SCRA 245, 249-250.

[28] Gabrito v. Court of Appeals , G.R. No. L-77976, November 24, 1988, 167 SCRA 771.

[29] Id. at 781. Emphasis supplied. Vide Guerrero v. Amores, G.R. No. L-34492, March 28, 1988, 159 SCRA 374, 382.

[30] Supra note 22 at 11-13.

[31] Supra note 21.

[32] Transfield Philippines, Inc. v. Luzon Hydro Corporation, G.R. No. 146717, November 22, 2004, 443 SCRA 307, 338.

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