

EMILIO GANCAYCO, PETITIONER, VS. CITY GOVERNMENT OF QUEZON CITY AND METRO MANILA DEVELOPMENT AUTHORITY, RESPONDENTS.

G.R. No. 177807. October 11, 2011

Ponente: SERENO, J.

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SERENO, J.:

Before us are consolidated Petitions for Review under Rule 45 of the Rules of Court assailing the Decision[1] promulgated on 18 July 2006 and the Resolution[2] dated 10 May 2007 of the Court of Appeals in CA-G.R. SP No. 84648.

The Facts

In the early 1950s, retired Justice Emilio A. Gancayco bought a parcel of land located at 746 Epifanio delos Santos Avenue (EDSA),[3] Quezon City with an area of 375 square meters and covered by Transfer Certificate of Title (TCT) No. RT114558.

On 27 March 1956, the Quezon City Council issued Ordinance No. 2904, entitled "An Ordinance Requiring the Construction of Arcades, for Commercial Buildings to be Constructed in Zones Designated as Business Zones in the Zoning Plan of Quezon City, and Providing Penalties in Violation Thereof." [4]

An arcade is defined as any portion of a building above the first floor projecting over the sidewalk beyond the first storey wall used as protection for pedestrians against rain or sun.[5]

Ordinance No. 2904 required the relevant property owner to construct an arcade with a width of 4.50 meters and height of 5.00 meters along EDSA, from the north side of Santolan Road to one lot after Liberty Avenue, and from one lot before Central Boulevard to the Botocan transmission line.

At the outset, it bears emphasis that at the time Ordinance No. 2904 was passed by the city council, there was yet no building code passed by the national legislature. Thus, the regulation of the construction of buildings was left to the discretion of local government units. Under this particular ordinance, the city council required that the arcade is to be created by constructing the wall of the ground floor facing the sidewalk a few meters away from the property line. Thus, the building owner is not allowed to construct his wall up to the edge of the property line, thereby creating a space or shelter under the first floor. In effect, property owners relinquish the use of the space for use as an arcade for pedestrians, instead of using it for their own purposes.

The ordinance was amended several times. On 8 August 1960, properties located at the Quezon City-San Juan boundary were exempted by Ordinance No. 60-4477 from the construction of arcades. This ordinance was further amended by Ordinance No. 60-4513, extending the exemption to commercial buildings from Balete Street to Seattle Street. Ordinance No. 6603 dated 1 March 1966 meanwhile reduced the width of the arcades to three meters for buildings along V. Luna Road, Central District, Quezon City.

The ordinance covered the property of Justice Gancayco. Subsequently, sometime in 1965, Justice Gancayco sought the exemption of a two-storey building being constructed on his property from the application of Ordinance No. 2904 that he be exempted from constructing an arcade on his property.

On 2 February 1966, the City Council acted favorably on Justice Gancayco's request and issued Resolution No. 7161, S-66, "subject to the condition that upon notice by the City Engineer, the owner shall, within reasonable time, demolish the enclosure of said arcade at his own expense when public interest so demands." [6]

Decades after, in March 2003, the Metropolitan Manila Development Authority (MMDA) conducted operations to clear obstructions along the sidewalk of EDSA in Quezon City pursuant to Metro Manila Council's (MMC) Resolution No. 02-28, Series of 2002. [7] The resolution authorized the MMDA and local government units to "clear the sidewalks, streets, avenues, alleys, bridges, parks and other public places in Metro Manila of all illegal structures and obstructions." [8]

On 28 April 2003, the MMDA sent a notice of demolition to Justice Gancayco alleging that a portion of his building violated the National Building Code of the Philippines (Building Code) [9] in relation to Ordinance No. 2904. The MMDA gave Justice Gancayco fifteen (15) days to clear the portion of the building that was supposed to be an arcade along EDSA. [10]

Justice Gancayco did not comply with the notice. Soon after the lapse of the fifteen (15) days, the MMDA proceeded to demolish the party wall, or what was referred to as the "wing walls," of the ground floor structure. The records of the present case are not entirely clear on the extent of the demolition; nevertheless, the fact of demolition was not disputed. At the time of the demolition, the affected portion of the building was being used as a restaurant.

On 29 May 2003, Justice Gancayco filed a Petition [11] with prayer for a temporary restraining order and/or writ of preliminary injunction before the Regional Trial Court (RTC) of Quezon City, docketed as Civil Case No. Q03-49693, seeking to prohibit the MMDA and the City Government of Quezon City from demolishing his property. In his Petition, [12] he alleged that the ordinance authorized the taking of private property without due process of law and just compensation, because the construction of an arcade will require 67.5 square meters from the 375 square meter property. In addition, he claimed that the ordinance was selective and discriminatory in its scope and application when it allowed the owners of the buildings located in the Quezon City-San Juan boundary to Cubao Rotonda, and Balete to Seattle Streets to construct arcades at their option. He thus sought the declaration of nullity of Ordinance No. 2904 and the payment of damages. Alternately, he prayed for the payment of just compensation should the court hold the ordinance valid.

The City Government of Quezon City claimed that the ordinance was a valid exercise of police power, regulating the use of property in a business zone. In addition, it pointed out that Justice Gancayco was already barred by estoppel, laches and prescription.

Similarly, the MMDA alleged that Justice Gancayco could not seek the nullification of an ordinance that he had already violated, and that the ordinance enjoyed the presumption of constitutionality. It further stated that the questioned property was a public nuisance impeding the safe passage of pedestrians. Finally, the MMDA claimed that it was merely implementing the legal easement established by Ordinance No. 2904. [13]

The RTC rendered its Decision on 30 September 2003 in favor of Justice Gancayco. [14] It held that the questioned ordinance was unconstitutional, ruling that it allowed the taking of private property for public use without just compensation. The RTC said that because 67.5 square meters out of Justice Gancayco's 375 square meters of property were being taken without compensation for the public's benefit, the ordinance was confiscatory

and oppressive. It likewise held that the ordinance violated owners' right to equal protection of laws. The dispositive portion thus states:

WHEREFORE, the petition is hereby granted and the Court hereby declares Quezon City Ordinance No. 2094,[15] Series of 1956 to be unconstitutional, invalid and void ab initio. The respondents are hereby permanently enjoined from enforcing and implementing the said ordinance, and the respondent MMDA is hereby directed to immediately restore the portion of the party wall or wing wall of the building of the petitioner it destroyed to its original condition.

IT IS SO ORDERED.

The MMDA thereafter appealed from the Decision of the trial court. On 18 July 2006, the Court of Appeals (CA) partly granted the appeal.[16] The CA upheld the validity of Ordinance No. 2904 and lifted the injunction against the enforcement and implementation of the ordinance. In so doing, it held that the ordinance was a valid exercise of the right of the local government unit to promote the general welfare of its constituents pursuant to its police powers. The CA also ruled that the ordinance established a valid classification of property owners with regard to the construction of arcades in their respective properties depending on the location. The CA further stated that there was no taking of private property, since the owner still enjoyed the beneficial ownership of the property, to wit:

Even with the requirement of the construction of arcaded sidewalks within his commercial lot, appellee still retains the beneficial ownership of the said property. Thus, there is no "taking" for public use which must be subject to just compensation. While the arcaded sidewalks contribute to the public good, for providing safety and comfort to passersby, the ultimate benefit from the same still redounds to appellee, his commercial establishment being at the forefront of a busy thoroughfare like EDSA. The arcaded sidewalks, by their nature, assure clients of the commercial establishments thereat some kind of protection from accidents and other hazards. Without doubt, this sense of protection can be a boon to the business activity therein engaged. [17]

Nevertheless, the CA held that the MMDA went beyond its powers when it demolished the subject property. It further found that Resolution No. 02-28 only refers to sidewalks, streets, avenues, alleys, bridges, parks and other public places in Metro Manila, thus excluding Justice Gancayco's private property. Lastly, the CA stated that the MMDA is not clothed with the authority to declare, prevent or abate nuisances. Thus, the dispositive portion stated:

WHEREFORE, the appeals are PARTLY GRANTED. The Decision dated September 30, 2003 of the Regional Trial Court, Branch 224, Quezon City, is MODIFIED, as follows:

- 1) The validity and constitutionality of Ordinance No. 2094,[18] Series of 1956, issued by the City Council of Quezon City, is UPHELD; and
- 2) The injunction against the enforcement and implementation of the said Ordinance is LIFTED.

SO ORDERED.

This ruling prompted the MMDA and Justice Gancayco to file their respective Motions for Partial Reconsideration.[19]

On 10 May 2007, the CA denied the motions stating that the parties did not present new issues nor offer grounds that would merit the reconsideration of the Court.[20]

Dissatisfied with the ruling of the CA, Justice Gancayco and the MMDA filed their respective Petitions for Review before this Court. The issues raised by the parties are summarized as follows:

- WHETHER OR NOT JUSTICE GANCAYCO WAS ESTOPPED FROM ASSAILING THE VALIDITY OF ORDINANCE NO. 2904.
- WHETHER OR NOT ORDINANCE NO. 2904 IS CONSTITUTIONAL.
- WHETHER OR NOT THE WING WALL OF JUSTICE GANCAYCO'S BUILDING IS A PUBLIC NUISANCE.
- WHETHER OR NOT THE MMDA LEGALLY DEMOLISHED THE PROPERTY OF JUSTICE GANCAYCO.

The Court's Ruling

Estoppel

The MMDA and the City Government of Quezon City both claim that Justice Gancayco was estopped from challenging the ordinance, because, in 1965, he asked for an exemption from the application of the ordinance. According to them, Justice Gancayco thereby recognized the power of the city government to regulate the construction of buildings.

To recall, Justice Gancayco questioned the constitutionality of the ordinance on two grounds: (1) whether the ordinance "takes" private property without due process of law and just compensation; and (2) whether the ordinance violates the equal protection of rights because it allowed exemptions from its application.

On the first ground, we find that Justice Gancayco may still question the constitutionality of the ordinance to determine whether or not the ordinance constitutes a "taking" of private property without due process of law and just compensation. It was only in 2003 when he was allegedly deprived of his property when the MMDA demolished a portion of the building. Because he was granted an exemption in 1966, there was no "taking" yet to speak of.

Moreover, in *Acebedo Optical Company, Inc. v. Court of Appeals*,^[21] we held:

It is therefore decisively clear that estoppel cannot apply in this case. The fact that petitioner acquiesced in the special conditions imposed by the City Mayor in subject business permit does not preclude it from challenging the said imposition, which is ultra vires or beyond the ambit of authority of respondent City Mayor. Ultra vires acts or acts which are clearly beyond the scope of one's authority are null and void and cannot be given any effect. The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or ultra vires. (Emphasis supplied.)

Recently, in *British American Tobacco v. Camacho*,^[22] we likewise held:

We find that petitioner was not guilty of estoppel. When it made the undertaking to comply with all issuances of the BIR, which at that time it considered as valid, petitioner did not commit any false misrepresentation or misleading act. Indeed, petitioner cannot be faulted for initially undertaking to comply with, and subjecting itself to the operation of Section 145(C), and only later on filing the subject case praying for the declaration of its unconstitutionality when the circumstances change and the law results in what it perceives to be unlawful discrimination. The mere fact that a law has been relied upon in the past and all that time has not been attacked as unconstitutional is not a ground for considering petitioner estopped from assailing its validity. For courts will pass upon a constitutional question only when presented before it in bona fide cases for determination, and the fact that the question has not been raised before is not a valid reason for refusing to allow it to be raised later. (Emphasis supplied.)

Anent the second ground, we find that Justice Gancayco may not question the ordinance on the ground of equal protection when he also benefited from the exemption. It bears emphasis that Justice Gancayco himself requested

for an exemption from the application of the ordinance in 1965 and was eventually granted one. Moreover, he was still enjoying the exemption at the time of the demolition as there was yet no valid notice from the city engineer. Thus, while the ordinance may be attacked with regard to its different treatment of properties that appears to be similarly situated, Justice Gancayco is not the proper person to do so.

Zoning and the regulation of the construction of buildings are valid exercises of police power .

In *MMDA v. Bel-Air Village Association*,^[23] we discussed the nature of police powers exercised by local government units, to wit:

Police power is an inherent attribute of sovereignty. It has been defined as the power vested by the Constitution in the legislature to make, ordain, and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the commonwealth, and for the subjects of the same. The power is plenary and its scope is vast and pervasive, reaching and justifying measures for public health, public safety, public morals, and the general welfare.

It bears stressing that police power is lodged primarily in the National Legislature. It cannot be exercised by any group or body of individuals not possessing legislative power. The National Legislature, however, may delegate this power to the President and administrative boards as well as the lawmaking bodies of municipal corporations or local government units. Once delegated, the agents can exercise only such legislative powers as are conferred on them by the national lawmaking body.

To resolve the issue on the constitutionality of the ordinance, we must first determine whether there was a valid delegation of police power. Then we can determine whether the City Government of Quezon City acted within the limits of the delegation.

It is clear that Congress expressly granted the city government, through the city council, police power by virtue of Section 12(oo) of Republic Act No. 537, or the Revised Charter of Quezon City,^[24] which states:

To make such further ordinances and regulations not repugnant to law as may be necessary to carry into effect and discharge the powers and duties conferred by this Act and such as it shall deem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the city and the inhabitants thereof, and for the protection of property therein; and enforce obedience thereto with such lawful fines or penalties as the City Council may prescribe under the provisions of subsection (jj) of this section.

Specifically, on the powers of the city government to regulate the construction of buildings, the Charter also expressly provided that the city government had the power to regulate the kinds of buildings and structures that may be erected within fire limits and the manner of constructing and repairing them.^[25]

With regard meanwhile to the power of the local government units to issue zoning ordinances, we apply *Social Justice Society v. Atienza*.^[26] In that case, the Sangguniang Panlungsod of Manila City enacted an ordinance on 28 November 2001 reclassifying certain areas of the city from industrial to commercial. As a result of the zoning ordinance, the oil terminals located in those areas were no longer allowed. Though the oil companies contended that they stood to lose billions of pesos, this Court upheld the power of the city government to pass the assailed ordinance, stating:

In the exercise of police power, property rights of individuals may be subjected to restraints and burdens in order to fulfil the objectives of the government. Otherwise stated, the government may enact legislation that

may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare. However, the interference must be reasonable and not arbitrary. And to forestall arbitrariness, the methods or means used to protect public health, morals, safety or welfare must have a reasonable relation to the end in view.

The means adopted by the Sanggunian was the enactment of a zoning ordinance which reclassified the area where the depot is situated from industrial to commercial. A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribes, defines and apportions a given political subdivision into specific land uses as present and future projection of needs. As a result of the zoning, the continued operation of the businesses of the oil companies in their present location will no longer be permitted. The power to establish zones for industrial, commercial and residential uses is derived from the police power itself and is exercised for the protection and benefit of the residents of a locality. Consequently, the enactment of Ordinance No. 8027 is within the power of the Sangguniang Panlungsod of the City of Manila and any resulting burden on those affected cannot be said to be unjust... (Emphasis supplied)

In *Carlos Superdrug v. Department of Social Welfare and Development*,^[27] we also held:

For this reason, when the conditions so demand as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by due process, must yield to general welfare.

Police power as an attribute to promote the common good would be diluted considerably if on the mere plea of petitioners that they will suffer loss of earnings and capital, the questioned provision is invalidated. Moreover, in the absence of evidence demonstrating the alleged confiscatory effect of the provision in question, there is no basis for its nullification in view of the presumption of validity which every law has in its favor. (Emphasis supplied.)

In the case at bar, it is clear that the primary objectives of the city council of Quezon City when it issued the questioned ordinance ordering the construction of arcades were the health and safety of the city and its inhabitants; the promotion of their prosperity; and the improvement of their morals, peace, good order, comfort, and the convenience. These arcades provide safe and convenient passage along the sidewalk for commuters and pedestrians, not just the residents of Quezon City. More especially so because the contested portion of the building is located on a busy segment of the city, in a business zone along EDSA.

Corollarily, the policy of the Building Code,^[28] which was passed after the Quezon City Ordinance, supports the purpose for the enactment of Ordinance No. 2904. The Building Code states:

Section 102. Declaration of Policy. - It is hereby declared to be the policy of the State to safeguard life, health, property, and public welfare, consistent with the principles of sound environmental management and control; and to this end, make it the purpose of this Code to provide for all buildings and structures, a framework of minimum standards and requirements to regulate and control their location, site, design quality of materials, construction, occupancy, and maintenance.

Section 1004 likewise requires the construction of arcades whenever existing or zoning ordinances require it. Apparently, the law allows the local government units to determine whether arcades are necessary within their respective jurisdictions.

Justice Gancayco argues that there is a three-meter sidewalk in front of his property line, and the arcade should be constructed above that sidewalk rather than within his property line. We do not need to address this argument inasmuch as it raises the issue of the wisdom of the city ordinance, a matter we will not and need not delve into.

To reiterate, at the time that the ordinance was passed, there was no national building code enforced to guide the

city council; thus, there was no law of national application that prohibited the city council from regulating the construction of buildings, arcades and sidewalks in their jurisdiction.

The "wing walls" of the building are not nuisances per se.

The MMDA claims that the portion of the building in question is a nuisance per se.

We disagree.

The fact that in 1966 the City Council gave Justice Gancayco an exemption from constructing an arcade is an indication that the wing walls of the building are not nuisances per se. The wing walls do not per se immediately and adversely affect the safety of persons and property. The fact that an ordinance may declare a structure illegal does not necessarily make that structure a nuisance.

Article 694 of the Civil Code defines nuisance as any act, omission, establishment, business, condition or property, or anything else that (1) injures or endangers the health or safety of others; (2) annoys or offends the senses; (3) shocks, defies or disregards decency or morality; (4) obstructs or interferes with the free passage of any public highway or street, or any body of water; or, (5) hinders or impairs the use of property. A nuisance may be per se or per accidens. A nuisance per se is that which affects the immediate safety of persons and property and may summarily be abated under the undefined law of necessity.[29]

Clearly, when Justice Gancayco was given a permit to construct the building, the city council or the city engineer did not consider the building, or its demolished portion, to be a threat to the safety of persons and property. This fact alone should have warned the MMDA against summarily demolishing the structure.

Neither does the MMDA have the power to declare a thing a nuisance. Only courts of law have the power to determine whether a thing is a nuisance. In *AC Enterprises v. Frabelle Properties Corp.*,[30] we held:

We agree with petitioner's contention that, under Section 447(a)(3)(i) of R.A. No. 7160, otherwise known as the Local Government Code, the Sangguniang Panglungsod is empowered to enact ordinances declaring, preventing or abating noise and other forms of nuisance. It bears stressing, however, that the Sangguniang Bayan cannot declare a particular thing as a nuisance per se and order its condemnation. It does not have the power to find, as a fact, that a particular thing is a nuisance when such thing is not a nuisance per se; nor can it authorize the extrajudicial condemnation and destruction of that as a nuisance which in its nature, situation or use is not such. Those things must be determined and resolved in the ordinary courts of law. If a thing be in fact, a nuisance due to the manner of its operation, that question cannot be determined by a mere resolution of the Sangguniang Bayan. (Emphasis supplied.)

MMDA illegally demolished
the property of Justice Gancayco.

MMDA alleges that by virtue of MMDA Resolution No. 02-28, Series of 2002, it is empowered to demolish Justice Gancayco's property. It insists that the Metro Manila Council authorized the MMDA and the local government units to clear the sidewalks, streets, avenues, alleys, bridges, parks and other public places in Metro Manila of all illegal structures and obstructions. It further alleges that it demolished the property pursuant to the Building Code in relation to Ordinance No. 2904 as amended.

However, the Building Code clearly provides the process by which a building may be demolished. The authority to order the demolition of any structure lies with the Building Official. The pertinent provisions of the Building Code provide:

SECTION 205. Building Officials. -- Except as otherwise provided herein, the Building Official shall be responsible for carrying out the provisions of this Code in the field as well as the enforcement of orders and decisions made pursuant thereto.

Due to the exigencies of the service, the Secretary may designate incumbent Public Works District Engineers, City Engineers and Municipal Engineers act as Building Officials in their respective areas of jurisdiction.

The designation made by the Secretary under this Section shall continue until regular positions of Building Official are provided or unless sooner terminated for causes provided by law or decree.

xxx xxx xxx

SECTION 207. Duties of a Building Official. -- In his respective territorial jurisdiction, the Building Official shall be primarily responsible for the enforcement of the provisions of this Code as well as of the implementing rules and regulations issued therefor. He is the official charged with the duties of issuing building permits.

In the performance of his duties, a Building Official may enter any building or its premises at all reasonable times to inspect and determine compliance with the requirements of this Code, and the terms and conditions provided for in the building permit as issued.

When any building work is found to be contrary to the provisions of this Code, the Building Official may order the work stopped and prescribe the terms and/or conditions when the work will be allowed to resume. Likewise, the Building Official is authorized to order the discontinuance of the occupancy or use of any building or structure or portion thereof found to be occupied or used contrary to the provisions of this Code.

xxx xxx xxx

SECTION 215. Abatement of Dangerous Buildings. -- When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the degree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines. (Emphasis supplied.)

MMDA v. Trackworks Rail Transit Advertising, Vending and Promotions, Inc.[31] is applicable to the case at bar. In that case, MMDA, invoking its charter and the Building Code, summarily dismantled the advertising media installed on the Metro Rail Transit (MRT) 3. This Court held:

It is futile for MMDA to simply invoke its legal mandate to justify the dismantling of Trackworks' billboards, signages and other advertising media. MMDA simply had no power on its own to dismantle, remove, or destroy the billboards, signages and other advertising media installed on the MRT3 structure by Trackworks. In *Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.*, *Metropolitan Manila Development Authority v. Viron Transportation Co., Inc.*, and *Metropolitan Manila Development Authority v. Garin*, the Court had the occasion to rule that MMDA's powers were limited to the formulation, coordination, regulation, implementation, preparation, management, monitoring, setting of policies, installing a system, and administration. Nothing in Republic Act No. 7924 granted MMDA police power, let alone legislative power.

Clarifying the real nature of MMDA, the Court held:

...The MMDA is, as termed in the charter itself, a "development authority". It is an agency created for the purpose of laying down policies and coordinating with the various national government agencies, people's organizations, non-governmental organizations and the private sector for the efficient and expeditious delivery of basic services in the vast metropolitan area. All its functions are administrative in nature and these are actually summed up in the charter itself, viz:

Sec.2. Creation of the Metropolitan Manila Development Authority.- xxx.

The MMDA shall perform planning, monitoring and coordinative functions, and in the process exercise regulatory and supervisory authority over the delivery of metro-wide services within Metro Manila, without diminution of the autonomy of local government units concerning purely local matters.

The Court also agrees with the CA's ruling that MMDA Regulation No. 96-009 and MMC Memorandum Circular No. 88-09 did not apply to Trackworks' billboards, signages and other advertising media. The prohibition against posting, installation and display of billboards, signages and other advertising media applied only to public areas, but MRT3, being private property pursuant to the BLT agreement between the Government and MRTC, was not one of the areas as to which the prohibition applied. Moreover, MMC Memorandum Circular No. 88-09 did not apply to Trackworks' billboards, signages and other advertising media in MRT3, because it did not specifically cover MRT3, and because it was issued a year prior to the construction of MRT3 on the center island of EDSA. Clearly, MMC Memorandum Circular No. 88-09 could not have included MRT3 in its prohibition.

MMDA's insistence that it was only implementing Presidential Decree No. 1096 (Building Code) and its implementing rules and regulations is not persuasive. The power to enforce the provisions of the Building Code was lodged in the Department of Public Works and Highways (DPWH), not in MMDA, considering the law's following provision, thus:

Sec. 201. Responsibility for Administration and Enforcement. - The administration and enforcement of the provisions of this Code including the imposition of penalties for administrative violations thereof is hereby vested in the Secretary of Public Works, Transportation and Communications, hereinafter referred to as the "Secretary."

There is also no evidence showing that MMDA had been delegated by DPWH to implement the Building Code. (Emphasis supplied.)

Additionally, the penalty prescribed by Ordinance No. 2904 itself does not include the demolition of illegally constructed buildings in case of violations. Instead, it merely prescribes a punishment of "a fine of not more than two hundred pesos (P200.00) or by imprisonment of not more than thirty (30) days, or by both such fine and imprisonment at the discretion of the Court, Provided, that if the violation is committed by a corporation, partnership, or any juridical entity, the Manager, managing partner, or any person charged with the management thereof shall be held responsible therefor." The ordinance itself also clearly states that it is the regular courts that will determine whether there was a violation of the ordinance.

As pointed out in Trackworks, the MMDA does not have the power to enact ordinances. Thus, it cannot supplement the provisions of Quezon City Ordinance No. 2904 merely through its Resolution No. 02-28.

Lastly, the MMDA claims that the City Government of Quezon City may be considered to have approved the demolition of the structure, simply because then Quezon City Mayor Feliciano R. Belmonte signed MMDA Resolution No. 02-28. In effect, the city government delegated these powers to the MMDA. The powers referred to are those that include the power to declare, prevent and abate a nuisance^[32] and to further impose the penalty of removal or demolition of the building or structure by the owner or by the city at the expense of the owner.^[33]

MMDA's argument does not hold water. There was no valid delegation of powers to the MMDA. Contrary to the claim of the MMDA, the City Government of Quezon City washed its hands off the acts of the former. In its Answer,^[34] the city government stated that "the demolition was undertaken by the MMDA only, without the participation and/or consent of Quezon City." Therefore, the MMDA acted on its own and should be held solely liable for the destruction of the portion of Justice Gancayco's building.

WHEREFORE, in view of the foregoing, the Decision of the Court of Appeals in CA-G.R. SP No. 84648 is

AFFIRMED.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Abad, Villarama, Jr., Mendoza, and Perlas-Bernabe, JJ., concur.

Bersamin and Perez, JJ., on official leave.

Del Castillo, J., on sick leave.

Reyes, J., no part.

[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr., concurring, rollo (G.R. No. 177807), pp. 58-79.

[2] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Bienvenido L. Reyes and Juan Q. Enriquez, Jr., concurring, id. at 81-83.

[3] Formerly 808 Highway 54.

[4] Rollo (G.R. No. 177933), pp. 29-31.

[5] Definitions, "Annex A," National Building Code, Presidential Decree No. 1096.

[6] Rollo (G.R. No. 177933), p. 32.

[7] Id. at 7.

[8] Id. at 33-37.

[9] Presidential Decree No. 1096.

[10] Rollo (G.R. No. 177933), p. 38.

[11] Id. at 39-55.

[12] Id. at 149-165.

[13] Id. at 166-173.

[14] Id. at 77-85.

[15] Note that the questioned ordinance is Ordinance No. 2904.

[16] Rollo (G.R. No. 177933), pp. 86-107.

[17] Id. at 99.

[18] Note that the questioned ordinance is Ordinance No. 2904.

[19] Id. at 108-116.

[20] Rollo (G.R. No. 177807), pp. 81-83.

[21] 385 Phil. 956, 978.

[22] G.R. No. 163583, 20 August 2008, 562 SCRA 511, 537.

[23] 385 Phil. 586, 601-602.

[24] Enacted on 16 June 1950.

[25] Sec. 12 (j).

[26] G.R. No. 156502, 13 February 2008, 545 SCRA 92, 139-140.

[27] G.R. No. 166494, 29 June 2007, 526 SCRA 130, 144.

[28] Presidential Decree No. 1096.

[29] *Telmo v. Bustamante*, G.R. No. 182567, 13 July 2009, 592 SCRA 552 citing *Tayaban v. People*, G.R. No. 150194, 6 March 2007, 517 SCRA 488, 507.

[30] G.R. No. 166744, 2 November 2006, 506 SCRA 625, 660-661.

[31] G.R. No. 179554, 16 December 2009, 608 SCRA 325, 332-334.

[32] Sec. 12(w).

[33] Sec. 12(jj).

[34] *Rollo* (G.R. No. 177933) pp. 249-270.

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