GUILLERMO M. TELMO, PETITIONER, VS. LUCIANO M. BUSTAMANTE, RESPONDENT.

G.R. No. 182567. July 13, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

For our consideration is a Petition[1] for Review on Certiorari under Rule 45 of the Rules of Court in relation to Section 27, paragraph 3 of the Ombudsman Act of 1989 (Republic Act No. 6770). Subject of the Petition is the Decision[2] dated October 13, 2005 and the Order[3] dated March 17, 2006 of the Office of the Deputy Ombudsman for Luzon.

This case arose from the Verified Complaint[4] filed by respondent Luciano M. Bustamante before the Office of the Deputy Ombudsman for Luzon against petitioner Guillermo Telmo, Municipal Engineer of Naic, Cavite, Danilo Consumo, Barangay (Brgy.) Chairman, Brgy. Halang, Naic, Cavite, and Elizalde Telmo, a private individual.

The complaint alleged that respondent is a co-owner of a real property of 616 square meters in Brgy. Halang, Naic, Cavite, known as Lot 952-A and covered by Transfer Certificate of Title No. T-957643 of the Register of Deeds of Cavite. Petitioner and Elizalde Telmo (Telmos) are the owners of the two (2) parcels of land denominated as Lot 952-B and 952-C, respectively, located at the back of respondent's lot. When his lot was transgressed by the construction of the Noveleta-Naic-Tagaytay Road, respondent offered for sale the remaining lot to the Telmos. The latter refused because they said they would have no use for it, the remaining portion being covered by the road's 10-meter easement.

The complaint further alleged that, on May 8, 2005, respondent caused the resurvey of Lot 952-A in the presence of the Telmos. The resurvey showed that the Telmos encroached upon respondent's lot. Petitioner then uttered, "Hangga't ako ang municipal engineer ng Naic, Cavite, hindi kayo makakapagtayo ng anuman sa lupa n'yo; hindi ko kayo bibigyan ng building permit."

On May 10, 2005, respondent put up concrete poles on his lot. However, around 7:00 p.m. of the same day, the Telmos and their men allegedly destroyed the concrete poles. The following day, respondent's relatives went to Brgy. Chairman Consumo to report the destruction of the concrete poles. Consumo told them that he would not record the same, because he was present when the incident occurred. Consumo never recorded the incident in the barangay blotter.

Respondent complained that he and his co-owners did not receive any just compensation from the government when it took a portion of their property for the construction of the Noveleta-Naic-Tagaytay Road. Worse, they could not enjoy the use of the remaining part of their lot due to the abusive, Illegal, and unjust acts of the Telmos and Consumo. Respondent charged the latter criminally--for violation of Article 312[5] of the Revised Penal Code and Section 3(e)[6] of Republic Act No. 3019[7]-- and administratively--for violation of Section 4 (a)[8], (b)[9], (c)[10], and (e)[11] of Republic Act No. 6713.[12]

In his Counter-Affidavit,[13] petitioner denied having uttered the words attributed to him by respondent, and claimed that he only performed his official duties in requiring an application for a building permit before any structure can be erected on government property. He said that respondent insisted on enclosing with barbed wire and concrete posts the lot that already belonged to the national government, which had now been converted into a national road. He also alleged that if he allowed the enclosures erected by the respondent, other residents would be denied ingress to and egress from their own properties.

In his own counter-affidavit, Consumo denied collusion with petitioner in not recording in the barangay blotter the subject incident. He explained that on May 10, 2005 at around 5:00 p.m., he was summoned by petitioner to intercede, because the respondent and his men were fencing the subject property. Consumo obliged, personally saw the fence being built, and observed that even the trucks owned by petitioner were enclosed therein. When he asked respondent if he had the necessary permit and the proper barangay clearance to do so, respondent's lawyer, Atty. San Gaspar, replied that there was no need for the permit and clearance since respondent was just fencing his own property. Thus, Consumo could not prevent the ongoing fencing, but told respondent and company to wait for petitioner to decide the matter.

Consumo further alleged that after putting up the fence, respondent and his companions left without waiting for the arrival of petitioner. When petitioner arrived, he explained to the people present that the property enclosed by respondent is owned by the government and that no one is allowed to construct any fence without a permit from him, as the Municipal Engineer, or from any building official of the local government of Naic, Cavite. Consumo said that the residents affected by the fence constructed by respondent were the ones who pulled out the concrete posts in order to provide access to the national road. These residents included the petitioner, whose trucks used for delivering sand and hollow blocks were enclosed and also denied access.

In his Counter-Affidavit,[14] Elizalde Telmo denied having encroached, occupied or taken possession of respondent's property. He claimed that, on May 10, 2005, he was merely an onlooker to the altercation between petitioner and respondent. He said that petitioner, his brother, insisted that respondent could not enclose the property in question unless the latter obtains a building permit from the Office of the Municipal Engineer/Building Official, since it appeared that the subject property was no longer a property of respondent but was converted into government property by virtue of the 30-meter road set-back imposed by the Zoning Ordinance of the Municipality of Naic, Cavite. Elizalde Telmo stated that he did not offer any resistance to the fencing of the property in question. He observed, though, that when they learned that petitioner was arriving at the place, respondent and his companions just left the vicinity.

Later, petitioner and respondent filed their respective position papers[15] upon the directive of the Graft Investigating and Prosecuting Officer. Their position papers reiterated the allegations made in their respective affidavits earlier submitted.

In the Decision[16] dated October 13, 2005, the Office of the Deputy Ombudsman for Luzon found petitioner and Danilo Consumo administratively liable, but dismissed the charge against Elizalde Telmo for lack of jurisdiction over his person, he being a private individual. The dispositive portion of the Decision states--

> WHEREFORE, premises considered, the undersigned investigator respectfully recommends the following, to wit:
>
> (1) That the administrative complaint against respondent Elizalde Telmo be DISMISSED for lack of jurisdiction;
>
> (2) That respondent Guillermo Telmo be meted the PENALTY OF FINE EQUIVALENT TO SIX (6) MONTHS SALARY for violation of Section 4 of Republic Act No. 6713; and

> (3) That respondent Danilo Consumo be meted the PENALTY OF FINE EQUIVALENT TO THREE (3) MONTHS HONORARIA for violation of Section 4 of Republic Act No. 6713.
>
> SO DECIDED.[17]

Petitioner filed a Motion for Reconsideration,[18] wherein he elaborated that he just performed his official duties when he summarily removed the concrete posts erected by respondent to enclose the property.

In the Order[19] dated March 17, 2006, the Office of the Deputy Ombudsman for Luzon denied the Motion for Reconsideration for lack of merit.

Hence, this petition anchored on the following grounds:

> - THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON SERIOUSLY ERRED WHEN HE DECLARED THAT THERE WAS NO VALID TAKING OF RESPONDENT'S LOT BY MEANS OF EXPROPRIATION.
>
> - THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON SERIOUSLY ERRED WHEN HE DECLARED THAT PETITIONER SHOULD BE AUTHORIZED BY THE MUNICIPAL MAYOR OR BY THE COURT TO ABATE PUBLIC NUISANCE OR NUISANCE PER SE.
>
> - THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON ERRED WHEN HE METED THE PENALTY OF FINE EQUIVALENT TO SIX (6) MONTHS SALARY FOR VIOLATION OF SECTION 4 OF REPUBLIC ACT NO. 6713.[20]

In essence, petitioner contends that the property claimed and enclosed with concrete posts by respondent was validly taken by the National Government through its power of eminent domain, pursuant to Executive Order No. 113, as amended by Executive Order No. 253, creating the Noveleta-Naic-Tagaytay Road. In this context, petitioner contends that the concrete posts erected by respondent were a public nuisance under Article 694 (4)[21] of the Civil Code, more particularly a nuisance per se, which may be summarily abated under Article 699 (3)[22] of the same Code. Petitioner says that as the Municipal Engineer, he is also the Building Official of Naic, Cavite; and thus, it was well within his authority, pursuant to Section 214, paragraph two (2) of the National Building Code, to order the removal of the concrete posts. Petitioner likewise claims that Section 23 of Revised Philippine Highway Act (Presidential Decree No. 17)[23] mandated him to remove respondent's concrete posts. Petitioner concludes that since he merely performed his official duties in removing the concrete posts erected by petitioner from the property, which is already owned by the government, he must be absolved of any administrative liability.

Instead of filing his comment on the petition, respondent manifested through counsel that he is no longer interested in pursuing this case, submitting therewith his Affidavit of Desistance[24] dated December 5, 2007. Respondent alleged in the affidavit that the administrative charges he lodged against petitioner were brought about by a misunderstanding between them, which differences have already been settled. Consequently, this case should now be dismissed.

We disagree.

The desistance of the complainant does not necessarily result in the dismissal of the administrative complaint because the Court attaches no persuasive value to a desistance, especially when executed as an afterthought.[25] It should be remembered that the issue in an administrative case is not whether the complaint states a cause of action against the respondent, but whether the public officials have breached the norms and standards of the public service.[26] Considering that petitioner admitted in his pleadings that he summarily removed the concrete posts erected by respondent, allegedly within the parameters of his authority as Municipal Engineer of Naic, Cavite, it is only proper that this case be decided on its merits rather than on the basis of the desistance of respondent.

It cannot be denied that respondent's property was taken by the National Government thru the Department of Public Works and Highways when it constructed the Noveleta-Naic-Tagaytay Road. What is not clear from the records of this case is whether respondent's property was taken as part of the national road itself or only as part of the right-of-way easement therefor. We observe that the re-survey plan[27] of his property attached by respondent to his complaint and the survey plan[28] of the Noveleta-Naic-Tagaytay Road submitted by petitioner appear to be different. Nevertheless, it is evident from the sketch plans that respondent could not enclose his property because it is now being used by the National Government. Therefore, whatever cause of action respondent may have in his claim for just compensation for the taking of his property, the same should be lodged against the National Government.

While it is settled that respondent does not have the legal right to enclose the property, we should now determine whether petitioner indeed performed his official functions properly.

First. Petitioner claims that his act of summarily removing respondent's concrete posts was authorized under the National Building Code (Presidential Decree No. 1096). The provision he cites correctly pertains to Section 215, which reads--

> Sec. 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 decree 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.

To better understand this provision, we refer to Section 214 of the same law, which defines what are dangerous and ruinous buildings or structures susceptible of abatement. It provides--

> Sec. 214. Dangerous and Ruinous Buildings or Structures. Dangerous buildings are those which are herein declared as such or are structurally unsafe or not provided with safe egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health or public welfare because of inadequate maintenance, dilapidation, obsolescence, or abandonment, or which otherwise contribute to the pollution of the site or the community to an intolerable degree.

A careful reading of the foregoing provisions would readily show that they do not apply to the respondent's situation. Nowhere was it shown that the concrete posts put up by respondent in what he believed was his and his co-owners' property were ever declared dangerous or ruinous, such that they can be summarily demolished by petitioner.

What is more, it appears that the concrete posts do not even fall within the scope of the provisions of the National Building Code. The Code does not expressly define the word "building." However, we find helpful the dictionary definition of the word "building," viz:

> [A] constructed edifice designed usually covered by a roof and more or less completely enclosed by walls, and serving as a dwelling, storehouse, factory, shelter for animals, or other useful structure - distinguished from structures not designed for occupancy (as fences or monuments) and from structures not intended for use in one place (as boats or trailers) even though subject to occupancy.[29]

The provisions of the National Building Code would confirm that "building" as used therein conforms to this definition. Thus, applying the statutory construction principle of ejusdem generic,[30] the word "structure" should be construed in the context of the definition of the word "building." The concrete posts put up by respondent on the property are not properly covered by the definition of the word "building" nor is it embraced in the corresponding interpretation of the word "structure."

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Second. Petitioner contends that respondent's concrete posts were in the nature of a nuisance per se, which may be the subject of summary abatement sans any judicial proceedings. Again, we disagree.

A nuisance per se is that which affects the immediate safety of persons and property and may be summarily abated under the undefined law of necessity.[31] Evidently, the concrete posts summarily removed by petitioner did not at all pose a hazard to the safety of persons and properties, which would have necessitated immediate and summary abatement. What they did, at most, was to pose an inconvenience to the public by blocking the free passage of people to and from the national road.

Third. Petitioner likewise maintains that his authority to perform the assailed official act sprang from Section 23 of the Revised Philippine Highway Act. He posits that this provision is particularly implemented by Department Order No. 52,[32] Series of 2003 of the Department of Public Works and Highways for the Removal of Obstructions and Prohibited Uses within the Right-of-Way of National Roads.

Department Order No. 52 directs all District Engineers to immediately remove or cause the removal of all obstructions and prohibited uses within the right-of-way of all national roads in their respective jurisdictions. These obstructions and prohibited uses include, among others, all kinds of private, temporary and permanent structures, such as buildings, houses, shanties, stores, shops, stalls, sheds, posts, canopies, billboards, signages, advertisements, fences, walls, railings, basketball courts, garbage receptacles, and the like. The Department Order requires the District Engineers to issue notices to the concerned persons to remove the obstructions and prohibited uses within the right-of-way, and shall follow through prompt compliance with these notices and full implementation of the Order. It further provides that appropriate sanctions will be taken against those who fail to comply with its provisions.

Gauging the action of petitioner based on the guidelines set by Department Order No. 52, from which he claims his authority, we cannot but conclude that petitioner went beyond the scope of his official power because it is the concerned District Engineer of the Department of Public Works and Highways who should have ordered respondent to remove the concrete posts. The petitioner failed to show that he was duly authorized by the District Engineer to implement the Department Order in Naic, Cavite. More importantly, even assuming that petitioner had been duly authorized to order the removal of the concrete posts of respondent, he failed to prove that he issued the required notice to respondent to remove the said structures before he did the removal himself. Note that petitioner, in fact, admitted in his pleadings that he summarily removed the said posts.

The Revised Philippine Highway Act and Department Order No. 52 do not expressly provide for the administrative sanction to be taken against public officials violating their provisions. Hence, we must refer to the Uniform Rules on Administrative Cases in the Civil Service. We believe that the administrative offense committed by petitioner through the questioned act was only Discourtesy in the Course of Official Duties, which is a light offense under Rule IV, Section 52 of the said Rules. The penalties imposable for such an offense are a reprimand for the first offense, a suspension from 1 day to 30 days for the second offense, and dismissal from public service for the third offense. Since this appears to be petitioner's first offense, his action warrants only a REPRIMAND.

WHEREFORE, the Decision dated October 13, 2005 and the Order dated March 17, 2006 of the Office of the Deputy Ombudsman for Luzon finding petitioner Guillermo M. Telmo, Municipal Engineer of Naic, Cavite, administratively culpable for violation of Section 4 of Republic Act No. 6713, imposing upon him the penalty of fine equivalent to his six 6-month salary, must be MODIFIED. Guillermo M. Telmo is instead found administratively guilty of DISCOURTESY IN THE COURSE OF OFFICIAL DUTIES and is hereby REPRIMANDED. Costs against petitioner.

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SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, Velasco, Jr., and Peralta, JJ., concur.

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[1] Rollo, pp. 3-13.

[2] Id. at 22-27.

[3] Id. at 14-21.

[4] Ombudsman Records, pp. 1-5.

[5] Art. 312. Occupation of real property or usurpation of real rights in property. - Any person who, by means of violence against or intimidation of persons, shall take possession of any real property or shall usurp any real rights in property belonging to another, in addition to the penalty incurred for the acts of violence executed by him, shall be punished by a fine from 50 to 100 per centum of the gain which he shall have obtained, but not less than 75 pesos.

If the value of the gain cannot be ascertained, a fine of from 200 to 500 pesos shall be imposed.

[6] Section 3. Corrupt practices of public officers - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licences or permits or other concessions.

[7] Anti-Graft and Corrupt Practices Act.

[8] Section 4. Norms of Conduct of Public Officials and Employees. - (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

(a) Commitment to public interest. - Public officials and employees shall always uphold the public interest over and above personal interest. All government resources and powers of their respective offices must be employed and used efficiently, effectively, honestly and economically, particularly to avoid wastage in public funds and revenues.

[9] (b) Professionalism. - Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

[10] (c) Justness and sincerity. - Public officials and employees shall remain true to the people at all times. They must act with justness and sincerity and shall not discriminate against anyone, especially the poor and the underprivileged. They shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest. They shall not dispense or extend undue favors on account of their office to their relatives whether by consanguinity or affinity

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except with respect to appointments of such relatives to positions considered strictly confidential or as members of their personal staff whose terms are coterminous with theirs.

[11] (e) Responsiveness to the public. - Public officials and employees shall extend prompt, courteous, and adequate service to the public. Unless otherwise provided by law or when required by the public interest, public officials and employees shall provide information of their policies and procedures in clear and understandable language, ensure openness of information, public consultations and hearings whenever appropriate, encourage suggestions, simplify and systematize policy, rules and procedures, avoid red tape and develop an understanding and appreciation of the socio-economic conditions prevailing in the country, especially in the depressed rural and urban areas.

[12] Code of Conduct and Ethical Standards for Public Officials and Employees.

[13] Ombudsman Records, pp. 16-17.

[14] Id. at 28.

[15] For the respondents, id. at 30-33; for the complainant, id. at 38-45.

[16] Rollo, pp. 22-27.

[17] Id. at 26.

[18] Id. at 49-56.

[19] Id. at 14-21.

[20] Id. at 6.

[21] Art. 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:

x x x

(4) Obstructs or interferes with the free passage of any public highway or street, or any body of water; x x x.

[22] Art. 699. The remedies against a public nuisance are:

x x x

(3) Abatement, without judicial proceedings.

[23] "It shall be unlawful for any person to usurp any portion of a right of way, to convert any part of any public highway, bridge, wharf or trail to his own private use or to obstruct the same in any manner."

[24] Rollo, p. 68.

[25] People v. Dimaano, G.R. No. 168168, September, 14, 2005, 469 SCRA 647, 663.

[26] Vilar v. Angeles, A.M. No. P-06-2276, February 5, 2007, 514 SCRA 147, 156.

[27] Ombudsman Records, p. 8.

[28] Rollo, p. 28.

[29] Webster's Third New International Dictionary (Unabridged), 1993, p. 292.

[30] Under the principle of ejusdem generis, where a statute describes a thing of a particular class or kind

accompanied by words of a generic character, the generic word will usually be limited to things of a similar nature as those particularly enumerated, unless there be something in the context of the statute that would repel such inference.

[31] Tayaban v. People, G.R. No. 150194, March 6, 2007, 517 SCRA 488, 507.

[32] Ombudsman Records, pp. 69-70.

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