

VALIENTE C. VILLEGAS PETITIONER, VS. THE HONORABLE VICTOR C. FERNANDEZ, DEPUTY OMBUDSMAN FOR LUZON, CONRADO S. ANCIADO, JR., ROLLY P. DANILA, ANDREI S. ARABIT AND JAIME M. BARON...

G.R. No. 184851. February 15, 2012

Ponente: REYES, J.

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REYES, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by Valiente C. Villegas (petitioner) assailing the Decision[1] dated August 8, 2008 and Resolution[2] dated October 7, 2008 issued by the Court of Appeals (CA) in CA-G.R. SP No. 92771.

On May 6, 2003, the petitioner requested then Mandaluyong City Mayor Benjamin Abalos, Jr. to allow him to improve the sidewalk and driveway fronting his house at Dr. Fernandez Avenue.[3] The improvement consists of planting trees and excavation of a concrete driveway and sidewalk. Thereupon, a building permit[4] was issued by Engineer Conrado S. Anciado, Jr. (Anciado) – the Head of Mandaluyong City Engineering Department.

After the said improvement works had been completed, the city government, in March 2004, implemented a road widening project along Dr. Fernandez Avenue. The residents therein agreed to demolish portions of their respective houses which encroached on the sidewalk and canals. Nevertheless, some of the residents therein complained to the Mayor that a portion of the petitioner's house likewise encroached on the sidewalk but the latter did not demolish the same.[5]

After conducting an inspection on Dr. Fernandez Avenue, Anciado notified the petitioner of the said encroachment.[6] However, the petitioner disputed Anciado's finding and asserted that, based on a prior survey of his property conducted after he had finished the said improvement works, the perimeter fence of his house was still within his property line. Nevertheless, the road widening works along Dr. Fernandez Avenue continued.

In December 2004, Anciado told the petitioner that the road widening of Dr. Fernandez Avenue was already complete except for the drainage and concreting of the portion of the road fronting the latter's house. Further, Anciado told the petitioner that he would assign a geodetic engineer to re-survey the site to determine whether the perimeter fence of the latter's house encroached on the sidewalk.[7] The petitioner refused Anciado's offer of re-survey and insisted on the immediate completion of the drainage and other works fronting his house.[8]

Nevertheless, Anciado proceeded with the re-survey of the site and found that the perimeter fence of the petitioner's house had encroached on the sidewalk. Thereupon, Anciado filed a complaint with the Mandaluyong City Council against the petitioner for the encroachment of the sidewalk fronting the petitioner's house.

In turn, the petitioner sought assistance from the Public Assistance Bureau of the Office of the Ombudsman (Ombudsman) in a letter[9] dated December 14, 2004. Consequently, a conference between the parties was held before the Ombudsman where it was agreed upon that Anciado would finish the drainage and other works

fronting the house of the petitioner. The petitioner claimed that Anciado failed to do the works that were agreed upon during the said conference before the Ombudsman.

Meanwhile, on April 5, 2005, the Mandaluyong City Council sent the petitioner a letter[10] inviting him to a hearing scheduled on April 20, 2005 with respect to the said complaint filed by Anciado.

Thus, on April 18, 2005, the petitioner formally filed a complaint[11] for neglect of duty against Anciado together with Mandaluyong City Engineering Office employees Rolly P. Danila and Jaime M. Baron and Mandaluyong City Building Inspector Andrei S. Arabit.

On June 23, 2005, Anciado and the other respondents in the case before the Ombudsman filed their Joint Counter Affidavit asserting that they could not proceed with the concreting of the pavement fronting the house of the petitioner in view of the pendency of the complaint against the petitioner for encroachment of the sidewalk.

On July 6, 2005, the Ombudsman issued an Order[12] dismissing the said complaint filed by the petitioner. The Ombudsman stated that:

However, as the records of the case will show, the purported failure to complete the project in question was totally beyond the control of the respondents, as the complainant has refused to cooperate in the intended re-survey of his property to determine whether the improvements he made have encroached upon a portion of the sidewalk. With this, the respondents can not be expected to pursue the project to its conclusion as they are hampered by the issue of the encroachment. The administrative charge of Neglect of Duty therefore is apparently without basis in fact and in law.

x x x x

But be that as it may, it has also been shown that, even before the filing of the present case on April 18, 2005, the matter of the encroachment by the complainant became the subject of appropriate proceedings before the City Council of Mandaluyong City, Committee on Engineering, as of April 5, 2005. Thus, it is incumbent that the said proceedings be allowed to continue until its conclusion. This is necessary since the issue in the present case, that is, whether the respondents indeed committed neglect of duty, becomes part and parcel of the issues in the said proceedings before the City Council.[13] (citations omitted)

The petitioner sought for a reconsideration[14] of the July 6, 2005 Order but it was denied by the Ombudsman in its Order[15] dated October 5, 2005.

Subsequently, the petitioner filed a petition for certiorari and mandamus[16] with the CA alleging that the Ombudsman gravely abused his discretion in dismissing the complaint for neglect of duty against Anciado and the other employees of Mandaluyong City Engineering Office.

On August 8, 2008, the CA rendered the herein assailed Decision[17] dismissing the petition for certiorari and mandamus filed by the petitioner. In disposing of the said petition, the CA held that the Ombudsman did not act arbitrarily or without substantial evidence in administratively exonerating the respondents. In contrast, the CA pointed out that there is substantial evidence underlying the finding of the Ombudsman that the respondents are not administratively remiss in leaving uncompleted the works in front of the property of the petitioner.

With respect to the petitioner's prayer for the issuance of a writ of mandamus, the CA held that:

We hold that mandamus is not proper in this – firstly, the petitioner has failed to prove a ministerial duty on the part of the respondents to pave and fix the drainage of the sidewalk up to the edge of his fence irrespective of whether it is on the property line or not, x x x, and secondly, even assuming that mandamus is available against the respondents, the action should not be directly filed with Us, but with the RTC which has jurisdiction over the area in which the dispute arises, under the principle of hierarchy of courts which serves as a general

determinant of the forum for petitions for extraordinary writs. x x x[18]

The petitioner sought for a reconsideration of the said August 8, 2008 Decision, but it was denied by the CA in its Resolution[19] dated October 7, 2008.

Undaunted, the petitioner instituted the instant petition for review on certiorari before this Court alleging that the CA erred in dismissing his petition for certiorari and mandamus thereby affirming the July 6, 2005 and October 5, 2005 Orders of the Ombudsman.

The petition is denied.

A perusal of the allegations, issues and arguments set forth by the petitioner would readily show that the CA did not commit any reversible error as to warrant the exercise of the Court's appellate jurisdiction.

Verily, an analysis of the various arguments raised by the petitioner in his petition would reveal that the same are geared towards discrediting the factual findings of the Ombudsman.

It is a well-settled rule that in a petition for review under Rule 45, only questions of law may be raised by the parties and passed upon by this Court.[20] It is the burden of the party seeking review of a decision of the CA or other lower tribunals to distinctly set forth in his petition for review, not only the existence of questions of law fairly and logically arising therefrom, but also questions substantial enough to merit consideration, or show that there are special and important reasons warranting the review that he seeks.[21]

Elementary is the rule that the findings of fact of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when they are affirmed by the CA. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made. In reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. It is not the function of this Court to analyze and weigh the parties' evidence all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result.[22]

We find no reason to depart from the foregoing rule.

The main issue in the administrative complaint for neglect of duty before the Ombudsman is whether Anciado and the other respondents therein committed neglect of duty in completing the road widening project along Dr. Fernandez Avenue. In resolving this issue, the Ombudsman held that:

The crux of the complaint appertains to the alleged neglect by the respondents in completing the project along Dr. Fernandez [Avenue].

However, as the records of the case will show, the purported failure to complete the project in question was totally beyond the control of the respondents, as the complainant has refused to cooperate in the intended re-survey of his property to determine whether the improvements he made have encroached upon a portion of the sidewalk. With this, the respondents can not be expected to pursue the project to its conclusion as they are hampered by the issue of the encroachment. The administrative charge of Neglect of Duty therefore is apparently without basis in fact and in law.

x x x

Needless to state, the matter of refusal of the complainant to cooperate with the respondents has been shown by several pieces of evidence, and the complainant can not be allowed to pass the buck onto the respondents.

But be that as it may, it has also been shown that, even before the filing of the present case on April 18, 2005, the matter of the encroachment by the complainant became the subject of appropriate proceedings before the City Council of Mandaluyong City, Committee on Engineering, as of April 5, 2008. Thus, it is incumbent that the said proceedings be allowed to continue until its conclusion. This is necessary since the issue in the present case, that is, whether the respondents indeed committed neglect of duty, becomes part and parcel of the issues in the said proceedings before the City Council.[23] (citations omitted)

As aptly found by the Ombudsman, which finding was affirmed by the CA, the delay in the completion of the drainage and other works on Dr. Fernandez Avenue, specifically the portion fronting the petitioner's house, was not attributable to Anciado and the other employees of the Mandaluyong City Engineering Department. Moreover, this matter was clearly and sufficiently addressed by the respondent-employees of Mandaluyong City Engineering Department in their Joint Counter Affidavit[24] before the Ombudsman. Thus:

3.4 However, we could not proceed with the concreting of the pavement in front of the complainant's property since this will entail removing the temporary drainage pipe underneath that we installed to prevent flooding in the area. This temporary drainage pipe is connected to the newly installed big culvert pipe and the old lined canal is located inside the encroached area of the complainant x x x. Also, this temporary drainage pipe is to be replaced by a big culvert pipe after the issue on complainant's encroachment shall have been resolved. Thus, if we proceeded with the concreting of said pavement, the City Government would have only incurred additional expenses because later on the same would be demolished to give way to the replacement of said temporary drainage pipe by a big culvert pipe.[25]

All told, we find that the petitioner failed to show any grave abuse of discretion or any reversible error on the part of the Ombudsman in issuing the July 6, 2005 and October 5, 2005 Orders, the same having been subsequently affirmed by the CA, which would impel this Court to rule otherwise.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is DENIED. The assailed Decision dated August 8, 2008 and Resolution dated October 7, 2008 issued by the Court of Appeals in CA-G.R. SP No. 92771 are AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Villarama, Jr.,[*] Perez, and Sereno, JJ., concur.

[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1195 dated February 15, 2012.

[1] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Celia C. Librea-Leagogo and Mariflor P. Punzalan-Castillo, concurring; rollo, pp. 336-346.

[2] Id. at 374.

[3] Id. at 55.

[4] Id. at 57-58.

[5] Id. at 101-102.

[6] Id. at 62.

[7] Id. at 63.

[8] Id. at 64.

- [9] Id. at 91.
- [10] Id. at 115.
- [11] Id. at 65-73.
- [12] Id. at 151-162.
- [13] Id. at 159-161.
- [14] Id. at 163-172.
- [15] Id. at 191-198.
- [16] Id. at 204-232.
- [17] Supra note 1.
- [18] Rollo, pp. 344-345.
- [19] Supra note 2.
- [20] Republic of the Philippines v. De Guzman, G.R. No. 175021, June 15, 2011.
- [21] Sps. Pengson v. Ocampo, Jr., 412 Phil. 860, 865-866 (2001).
- [22] Tolentino v. Loyola, G.R. No. 153809, July 27, 2011.
- [23] Rollo, pp. 159-161.
- [24] Id. at 93-97.
- [25] Id. at 94.

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