

**ELEUTERIO DOMINGO, PETITIONER, VS. HON. ALFREDO A. ROSERO,
PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH XXVI, NAGA
CITY; LEONILLO BERCASIO AND CANDIDA DELA TORRE,
RESPONDENTS.**

G.R. No. 70245. May 05, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The correct appreciation and application of the provisions of Presidential Decree No. 1508, more commonly known as the Katarungang Pambarangay Law, particularly Section 6 thereof, which mandate the submission of certain disputes before the barangay Lupong Tagapayapa for conciliation and, if possible, amicable settlement between the parties, prior to the filing of the controversy in the courts of justice, is, again, the concern of this special civil action for certiorari. The petitioner assails the public respondent, Judge Alfredo A. Rosero of the Regional Trial Court of Naga City, for allegedly acting with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing on November 23, 1984, the resolution[1] ordering the dismissal of his (petitioner's) complaint in Civil Case No. 84-295, entitled, "Eleuterio Domingo vs. Leonilo Bercasio, et al.," then pending in the respondent judge's sala.

There is no controversy as to the facts.

On February 7, 1984, the petitioner, as plaintiff, filed a complaint[2] for declaration of ownership with damages against the private respondents, the spouses Leonilo Bercasio and Candida dela Torre. Seventeen days thereafter, or on February 24, 1984, to be exact, the private respondents-defendants filed their answer (with counterclaim)[3] to the complaint. Still much later, on November 11, 1984, the private respondents moved for the dismissal of the complaint against them on the sole ground that the petitioner allegedly failed to comply with the provisions of Section 6 of Presidential Decree (P.D.) No. 1508 which require conciliation proceedings before the barangay Lupong Tagapayapa as a pre-condition to the filing of a case in court.[4] The petitioner lost no time in submitting an opposition to the private respondents' motion to dismiss. The respondent judge, to whose sala the case was raffled, on November 23, 1984, issued the questioned resolution dismissing the complaint for lack of jurisdiction. A motion for reconsideration of the trial court's resolution was filed, the petitioner-movant arguing that the case does not come within the ambit of P.D. No. 1508 inasmuch as the parties thereto reside in different provinces. Alternatively, the petitioner insisted that even granting that there was indeed a need to submit the case first before the barangay court, the private respondents' failure to seasonably raise that ground in a motion to dismiss before they filed their answer, or in their answer itself, constitutes a waiver of the said ground.[5] Apparently, the petitioner's supplications fell on deaf ears because the respondent trial court judge, on February 6, 1985, denied the motion for reconsideration for allegedly being "devoid of merit." [6]

From the trial court, the petitioner came straight to us vigorously maintaining, as earlier adverted to, that the respondent judge acted with grave abuse of discretion in dismissing his complaint.

We grant the petition.

Section 6 of P.D. No. 1508 itself, from which the respondent judge based his rulings, categorically states that it should be taken in conjunction with the provisions of Section 2 of the same decree.

SECTION 6. Conciliation, precondition to filing of complaint. - No complaint, petition, action or proceeding involving any matter within the authority of the Lupon as provided in Section 2 hereof shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as certified by the Lupon Secretary or the Pangkat Secretary, attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated. However, the parties may go directly to court in the following cases:

- (1) Where the accused is under detention;
- (2) Where a person has otherwise been deprived of personal liberty calling for habeas corpus proceedings;
- (3) Actions coupled with provisional remedies such as preliminary injunction, attachment, delivery of personal property and support pendente lite; and
- (4) Where the action may otherwise be barred by the Statute of Limitations.

(Emphasis ours.)

Section 2 of P.D. No. 1508, on the other hand provides:

SECTION 2. Subject matters for amicable settlement. - The Lupon of each barangay shall have authority to bring together the parties actually residing in the same city or municipality for amicable settlement of all disputes except:

- (1) Where one party is the government, or any subdivision or instrumentality thereof;
- (2) Where one party is a public officer or employee, and the dispute relates to the performance of his official functions;
- (3) Offenses punishable by imprisonment exceeding 30 days, or a fine exceeding P200.00;
- (4) Offenses where there is no private offended party;
- (5) Such other classes of disputes which the Prime Minister may in the interest of justice determine upon recommendation of the Minister of Justice and the Minister of Local Government.

(Emphasis ours.)

Additionally, Section 3 thereof states that:

SECTION 3. Venue. - Disputes between or among persons actually residing in the same barangay shall be brought for amicable settlement before the Lupon of said barangay. Those involving actual residents of different barangays within the same city or municipality shall be brought in the barangay where the respondent or any of the respondents actually resides, at the election of the complainant. However, all disputes which involve real property or any interest therein shall be brought in the barangay where the real property or any part thereof is situated.

The Lupon shall have no authority over disputes:

- (1) involving parties who actually reside in barangays of different cities or municipalities, except where such

barangays adjoin each other; and

x x x

(Emphasis ours.)

From the foregoing provisions of the Katarungang Pambarangay Law, it is crystal clear that only disputes between parties who are actual residents of barangays located in the same city or municipality, or residents of adjoining barangays located in two different municipalities, are within the jurisdiction of the barangay court.

Unfortunately, the respondent judge failed to see the error of his position divesting himself of jurisdiction and insisting that the complaint should first be presented before the barangay court.

The petitioner (plaintiff) avers in paragraph 1 of his complaint[7] that his residence and postal address is at 660 T. Solit Street, Pateros, Metro Manila, while the defendants (private respondents) are residents of Barangay Sto. Domingo, Pacasao, Camarines Sur. This averment is specifically admitted by the defendants (private respondents) in paragraph 1 of their Answer With Counterclaim.[8] The parties are therefore not only residents of different barangays and municipalities but are also, in fact, residents of different provinces. P.D. No. 1508 only applies to residents of the same municipalities or at most, under par. 1 of Section 3 thereof, residents of adjoining barangays situated in two different municipalities.[9] It would therefore be absurd if the compulsory conciliation process is made to apply to residents of different and distant provinces, as the parties herein, when the law itself is inapplicable to residents of different municipalities unless they are from adjacent barangays. Undoubtedly, the dispute between the petitioner and the private respondent is beyond the jurisdiction of any barangay court and could immediately be filed in the regular courts of justice as the petitioner here did.

The private respondents submit that the subject dispute between them and the petitioner is cognizable by the barangay Lupon. They premise their contention on the allegation that at the time the petitioner filed his complaint, he was temporarily residing in Barangay Sto. Domingo, in Pacasao, Camarines Sur.[10] But even if the foregoing allegation were a fact, the private respondents' argument remains seriously flawed. Residence in a barangay within the same municipality if only transient or temporary is not enough to vest jurisdiction upon the barangay Lupon.

In the case of *Bejer vs. Court of Appeals, et al.*, [11] we have had the occasion to rule that residence as contemplated in P.D. No. 1508 compels not only actual residence but also membership in the barangay. Here, it has not been shown that the petitioner became a member of Barangay Sto. Domingo during his brief sojourn in Pacasao, Camarines Sur. It follows, lacking in that qualification, that he could not then be considered, for the purpose of applying the provisions of P.D. No. 1508, as an actual resident of Barangay Sto. Domingo. There is therefore no need for the dispute between him and the private respondents to be brought before a barangay Lupon.

At any rate, as correctly pointed out by the petitioner, even assuming *ex gratia argumenti* that the dispute is cognizable by a barangay court, the requirement of submission or referral to the Lupon Tagapayapa under P.D. 1508 is merely a condition precedent for the filing of a complaint in court [12] and not jurisdictional. [13] It is the Judiciary Revamp Law (Batas Pambansa Blg. 129) and the Judiciary Act of 1948, and not P.D. No. 1508, which vest jurisdiction. [14] Accordingly, the failure of the private respondents to raise timely this ground in a motion to dismiss filed before their answer to the complaint, or in their answer, constitutes a waiver thereof. [15] We have consistently adhered to that rule and we see no cogent reason to deviate from it now.

WHEREFORE, the Resolution dated September 23, 1984 and the Order dated February 6, 1985 of the public respondent, Judge Alfredo A. Rosero, dismissing the petitioner's Complaint, are hereby REVERSED and SET ASIDE, and the trial court is ordered to REINSTATE Civil Case No. 84-295 thereof. No cost.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[1] Rollo, 22-23.

[2] Id., 15-17.

[3] Id., 18-19.

[4] Id., 20.

[5] Id., 8-9.

[6] Id., 9-10.

[7] Rollo, 15.

[8] Rollo, 18.

[9] Agbayani vs. Belen, No. 65629, November 24, 1986, 145 SCRA 635.

[10] Id., 37.

[11] G.R. No. 79404, January 27, 1989.

[12] Peregrina vs. Panis, No. 56011, October 31, 1984, 133 SCRA 72.

[13] Royales vs. Intermediate Appellate Court, No. 65072, January 31, 1984, 127 SCRA 470; Ebol vs. Amin, No. 70237, March 18, 1985, 135 SCRA 438; Millare vs. Hernando, No. 55480, June 30, 1987, 151 SCRA 484.

[14] Ebol vs. Amin, *supra*; Gonzales vs. Court of Appeals, Nos. 59495-97, June 26, 1987, 151 SCRA 289.

[15] Royales vs. Intermediate Appellate Court, *supra*; Gonzales vs. Court of Appeals, *supra*.

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