

BF HOMES, INCORPORATED AND PHILIPPINE WATERWORKS AND CONSTRUCTION CORPORATION, PETITIONERS, VS. NATIONAL WATER RESOURCES COUNCIL AND THE COURT OF APPEALS, RESPONDENTS.*G.R. No. 78529. September 17, 1987*

Ponente: FELICIANO, J.

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Petitioner BF Homes, Inc., is a residential subdivision owner-operator and as such, constructed water distribution systems at its several subdivisions so that residents would have an adequate supply of potable water. Petitioner applied for and was granted a Certificate of Public Convenience and Necessity in respect of its water distribution system at its Las Piñas subdivision. Petitioner sought authority from the respondent National Water Resources Council on 12 March 1982 to transfer the Certificate of Public Convenience and Necessity to its co-petitioner, the Philippine Waterworks and Construction Corporation (PWCC). To date, the application for transfer has yet to be acted upon by the respondent Council.

Petitioner also has a Certificate of Public Convenience and Necessity to operate its water distribution system at B.F. Homes Parañaque. On 25 June 1985, petitioner sought authority from respondent Council to increase the water rates at B.F. Homes Parañaque. Petitioner alleges that the increase in rates was not opposed by the residents of that subdivision who, as a matter of fact, sought immediate approval so that the increased rates would enable petitioner to meet the power bills from the Manila Electric Company, power being essential for operation of the water distribution system. Respondent Council similarly failed to date to act upon this application to increase rates.

Petitioner filed a petition for mandamus with the respondent appellate court to compel respondent Council to act on the application for transfer of the franchise at Las Piñas to PWCC and also to act upon the application for authority to increase water rates. Respondent appellate court, in two Resolutions dated respectively 16 February 1987 and 28 May 1987 in C.A.-G.R. SP No. 09135, dismissed the petition for mandamus upon the ground that mandamus will not issue to compel the respondent Council to act on the matters pending before it, since such acts are not ministerial in nature.

The respondent appellate court fell into reversible error here. It is established doctrine that mandamus will not issue to control the performance of discretionary, non-ministerial, duties, that is, to compel a body discharging duties involving the exercise of discretion to act in a particular way or to approve or disapprove a specific application. In *Mackenzie Pio vs. Hon. Pio R. Marcos, etc., et al.*,^[1] this Court, through then Mr. Justice Teehankee, said:

"The petition must fail because under the circumstances of record, the issuance of the injunction sought is manifestly not a ministerial duty, viz a duty which is so clear and specific as to leave no room for the exercise of discretion in its performance and its discharge requires neither the exercise of official discretion nor

judgment. The issuance of a writ of discretion and mandamus will not lie to compel the performance of such discretionary function. It is an established principle that the writ of mandamus may not be issued to control the discretion of a judge or to compel him to decide a case or a motion pending before him in a particular way - the writ being available only to compel him to exercise his discretion or his jurisdiction." [2] (Underscoring supplied)

Again, in *Philippine Airlines Employees Associations vs. Philippine Airlines, Inc.*, [3] Mme. Justice Melencio-Herrera wrote:

"x x x But while Certiorari is a proper procedural remedy, this Court cannot compel respondent Court to lift its Order of December 6, 1969 or to reconsider the same, for this involves the exercise of judgment and discretion. It can only compel respondent Court to act on the pending Motions one way or the other. It is an established principle that the Writ of Mandamus may not be issued to control the discretion of a Judge or to compel him to decide a case or motion in a particular way - the Writ being available only to compel him to exercise his discretion or jurisdiction. The law concedes to Judges and Courts the right to decide questions according to their own judgment and understanding of the law." [4] (Underscoring supplied)

Petitioner, however, does not here seek to compel respondent Council specifically to approve petitioner's applications pending before it. What petitioner seeks, and this it is entitled to, is a writ that would require respondent Council to consider and deliberate upon the applications before it, examining in that process whatever evidence lies before it and to act accordingly, either approving or disapproving the applications before it, in accordance with applicable law and jurisprudence and in the best interest of the community involved. Per the records of this case, respondent Council has failed, for unexplained reasons, to exercise its discretion and to act, one way or the other, on the applications of petitioners for a prolonged period of time imposing in the process substantial prejudice or inconvenience upon the many hundreds of families living in the two subdivisions involved. It appears, further, that respondent Council failed to inform petitioner of a supposed need for additional data concerning petitioner PWCC.

WHEREFORE, the Petition for Review is GRANTED due course and the Resolutions dated 16 February 1987 and 28 May 1987 of the respondent appellate court are hereby set aside. Considering the need for prompt action, the Court resolved itself to issue directly a Writ of Mandamus against the respondent Council commanding it forthwith to act upon petitioner's Application for Increase in Water Rates in BF Homes Parañaque (NWRC Case No. 78-037) and on petitioner's Application for Transfer of Certificate of Public Necessity and Convenience in B.F. Homes Las Piñas (NWRC Case No. 82-161). No pronouncement as to costs. This Resolution is immediately executory.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Bidin, and Cortes, JJ., concur.

[1] 56 SCRA 726 (1974).

[2] 56 SCRA at 746.

[3] 111 SCRA 215 (1982).

[4] 111 SCRA at 219-220.

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