

ARCH. DOMINGO R. TAPAY, PETITIONER, VS. MMC ACTING GOVERNOR ELFREN CRUZ, MAYOR BRIGIDO SIMON, JR. AND ARCH. LEONARDO ESPINOSA, JR., RESPONDENTS.

G.R. No. 84701. June 13, 1990

Ponente: PARAS, J.

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PARAS, J.:

Who has the power to appoint Building Officials in Metro Manila - the Secretary of the Department of Public Works and Highways (DPWH) or the Metro Manila Commission (MMC) Governor? This is the issue upon which the Court is called upon to resolve in this petition.

Petitioner Arch. Domingo R. Tapay is the incumbent Building Official of Quezon City, having been designated and appointed to the position by then Minister Jesus Hipolito of the Ministry of Public Works and Highways, on March 4, 1982.

On July 28, 1988, respondent MMC Acting Governor Elfren Cruz, in an Office Order No. 70, ordered the recall of herein petitioner to the MMC Action Center for Infrastructure Development (MMC - ACID). Then, on August 11, 1988 respondent MMC Acting Governor issued Office Order No. 75 designating respondent Arch. Espinosa, Jr. as the Acting MMC Building Official of Quezon City.

By virtue of the said Office Orders, respondent Mayor issued a Memorandum dated August 17, 1988, addressed to all department heads and other units and government agencies of Quezon City, directing that all official transactions pertaining to the implementation of the National Building Code and its Implementing Rules and Regulations, the Fire Code, ancillary laws and other issuances pertinent thereto should be coursed through respondent Architect Espinosa being the designated Acting Building Official of Quezon City.

Assailing the legality of the aforesaid Office Orders and Memorandum, petitioner now seeks the nullification thereof. It is petitioner's contention that said orders and memorandum are entirely without any legal basis hence, clearly illegal for the following reasons -

"1. Petitioner is a national official over whom the respondents MMC Acting Governor and the Mayor of Quezon City has no legal power or authority of control and supervision in the discharge of his national functions.

"2. It is the Secretary of Public Works and Highways, not the respondent MMC Acting Governor nor the respondent Mayor, who has the power of control and supervision over petitioner. In truth and in fact, it is the Secretary of Public Works and Highways who appoints the Quezon City Building Official including the other cities and municipalities of the Metropolitan Manila Area and the rest of the building officials in the country, pursuant to the provisions of the National Building Code (PD. 1096)." (p. 4, Rollo)

In support of said contention, petitioner cites -

(a) Sections 201 and 205 of the National Building Code (P.D. No. 1096) which provide:

"SECTION 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.'

"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 to 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 cause provided by law or decree." (pp. 21-22, Rollo)

(b) The letter dated June 23, 1988 of then, Sec. J. Nery Ferrer of the Department of Public Works and Highways which partly states -

"This refers to your letter requesting for the confirmation of the designation made by his Honor in favor of Arch. Luciano V. Aquino, City Architect, that city, as Building Official for Quezon City.

"With regrets, I cannot give due course to your request because the position of Building Official for Quezon City is not vacant. The same is occupied by the incumbent Arch. Domingo R. Tapay who is the bonafide designee by this Department.

"At this juncture, it is opportune to inform you as we had done so to a number of newly elected local officials the latest of which is Hon. Gemiliano Lopez of Manila that the appointment/designation of Building Officials is the sole prerogative of this Office as a corollary to its power to enforce and administer the National Building Code (Section 201, P.D. 1096). Building Officials are the deputies of this Office in the enforcement of the National Building Code in their respective areas of jurisdiction (Sec. 205, P.D. 1096). In such capacity, they are national officials since they exercise a function national in character (OP, Secretary of Justice No. 44, S. 1979, No. 90, S. 1984). Therefore, designation made by local executive is devoid of legal basis.

"We also wish to inform about the participation of local officials insofar as the enforcement of the NBC as contained in the Joint Memorandum Circular dated August 17, 1977, between this Department and the Department of Local Government, the pertinent part of which reads:

'Local executives shall cease to exercise the function of issuing building permits upon effectivity of the implementing rules of the Building Code x x x.

'As part of their executive function they shall oversee the implementation of the code within their respective jurisdiction and call the attention of the Building Official x x x on any problem or irregularities that may occur or arise.

'They shall assist in the conduct of informational campaign to secure compliance of the citizens to the code to assure that local building and structures are maintained in a safe, sanitary and goodworking condition x x x.'

"In the light of the foregoing, it is hoped that you have been satisfactorily clarified about our request, in view of which, it is respectfully requested that the subject designation be withdrawn to avoid confusion and legal complications in the delivery of service on building matters to your constituents." (pp. 4-5, Rollo)

(c) The opinion of then Sec. of Justice Sedfrey Ordonez in Opinion No. 140, Series of 1987 of the Department of

Justice which in part reads -

"As to the issue of who has power to appoint Building Officials for the Metro Manila area, it is our view that the same is vested solely in the Secretary of Public Works and Highways as a corollary to his power to enforce and administer P.D. No. 1096. In Opinion No. 44, s. 1979, we ruled that Building Officials who are the deputies of the Secretary of Public Works and Highways in the enforcement of the National Building Code in their respective areas of jurisdiction (Section 205, P.D. No. 1096) are national officials because they exercise a function of national concern (see also Op. No. 92, s. 1983). As national officials, their appointment should be the prerogative of the Secretary of Public Works and Highways, who is also the official expressly authorized by law to designate incumbent Public Works District Engineers, City Engineers and Municipal Engineers to act as Building Officials in their respective areas of jurisdiction in the meantime that regular positions of Building Officials have not been provided for (Sec. 205, P.D. No. 1096).

"In the instant case, the fact that the MMC has provided positions of Building Officials in its Staffing Pattern with salaries paid out of MMC funds does not make them local officials because, in the performance of their functions, they are by specific provision of P.D. No. 1096 subject to the supervision and control of the national authority (Op. No. 83, s. 1974), in this case, the Secretary of Public Works and Highways. Furthermore, this Office has time and again expressed the view that in determining whether an official or employee in the public service is a national, provincial, city or municipal employee, service is the test, not the source of funds from which his salary is paid or the office or official who fixes his salary (Ops. No. 105, s. 1977; No. 75, s. 1975; Nos. 131 and 164, s. 1962; No. 33, s. 1959; 174, s. 1947; No. 370, s. 1940).

"As previously stated, the administration and enforcement of the provisions of the National Building Code is the primary concern of the national government, the said function being vested in the Secretary of Public Works and Highways (Sec. 201, Code), a national official. Since a Building Official assigned to a province, city or municipality is the deputy of the Secretary of Public Works and Highways in the enforcement of the provisions of the National Building Code, he is deemed to be a national official notwithstanding that his salary is paid out of local funds.

"In view of the foregoing, we reiterate the view that the authority to administer and enforce the provisions of the National Building Code, and the power to appoint Building Officials, throughout the country, including Metro Manila, pertain to the Secretary of Public Works and Highways and to no other official.

"Please be guided accordingly." (pp. 25--26, Rollo)

Upon the other hand, respondents maintain that the authority granted to the Secretary of Public Works and Highways extends only over areas beyond the territorial jurisdiction of the Metro Manila Commission, which itself is independently charged with the administration and enforcement of the Code within Metropolitan Manila. This is the true meaning of the law, as it is clearly expressed in the implementing Letter of Instruction No. 624 as follows:

"12. The Governor of the Metropolitan Manila Commission shall be responsible for the proper administration and efficient enforcement of Presidential Decree No. 1096 within Metropolitan Manila area. The Metropolitan Manila Commission shall, as necessary, employ and maintain sufficient and technically capable staff to man the Plan Enforcement and Regulation Center (PERC) in the said enforcement of PD 1096. The Governor of the Metropolitan Manila Commission, through the Executive Secretary, shall supervise the personnel of the PERC. As such, the MMC shall be responsible for all operating and incidental expenses to be incurred by the PERC relative to the administration and enforcement of the said PD including honoraria and allowances for consultants and employees detained to PERC from the different involved government agencies. The MMC, thru PERC, shall

administer the collection of building permit fees through the local building officials and retain an amount not exceeding 20% thereof to be used for the operating expenses of the different local building officers of the Metropolitan Manila and the PERC." (p. 54, Rollo)

It is also the position of respondents, particularly respondent MMC Acting Governor that because the MMC has already provided regular positions for all MMC Building Officials in the MMC Staffing Pattern duly approved by the Civil Service Commission in 1981, the authority of the Secretary of Public Works and Highways to designate Acting Building Officials for the 17 cities and municipalities in Metro Manila pursuant to Section 205 of PD 1096 was terminated and that accordingly it is his (MMC Acting Governor) designee respondent Arch. Leonardo D. Espinosa, Jr. who is the lawful Acting Building Official of Quezon City to replace Arch. Domingo Tapay.

We do not agree with respondents' contentions. LOI No. 624 does not confer upon the MMC Governor the power of administration and enforcement of the National Building Code in Metro Manila for the following reasons -

LOI 624 cannot be a valid amendment to the National Building Code because it is repugnant to the declared policy of the State for attaining a uniform enforcement and administration of the Code.

No less than the President speaking thru his Executive Assistant for Legal Affairs in Opinion No. 74, S. 1984 states that "the power to enforce the National Building Code is lodged in no other except the Minister of Public Works and Highways following the well-known rule of law *inclusio unius est exclusio alterius*."

It was not the intention of LOI No. 624 to amend or supersede Section 201 of the National Building Code. Essentially, LOI No. 624 is a directive issued by then President Marcos enjoining the heads of the different departments and agencies of the government enumerated therein to cooperate and coordinate with the PERC (Plan Enforcement and Regulation Center) in the implementation of PD No. 1096 in the Metro Manila Area. Its avowed purpose is to implement the provisions of PD No. 1096. Thus, said LOI provides -

"In accordance with Presidential Decree No. 1096 which adopted a uniform building code and in pursuance of the creation of the Plan Enforcement and Regulation Center (PERC) under the Metropolitan Manila Commission which shall aim to implement Presidential Decree No. 1096 within Metropolitan Manila Area, I hereby order the following:

'1. The Secretary of the DPWTC shall see to it that the PERC be provided with technical supervision and guidance in the implementation of the National Building Code in Metropolitan Manila Area. The DPWTC shall detail with PERC an overall MMA Building official who shall be responsible for processing the plans and specifications of buildings and structures of metro significance and for recommending to the Executive Secretary the issuance of building/structure clearance. He shall direct the NHA, CAA, MWSS, NPCC and other agencies under it, as may be necessary, to assign required personnel to coordinate with PERC.

x x x x x x x x

'12. The Governor of the Metropolitan Manila Commission shall be responsible for the proper administration and efficient enforcement of Presidential Decree No. 1096 within Metropolitan Manila Area. The Metropolitan Manila Commission shall, as necessary, employ and maintain sufficient and technically capable staff to man the Plan Enforcement and Regulation Center (PERC) in the said enforcement of PD 1096. The Governor of the Metropolitan Manila Commission, through the Executive Secretary, shall supervise the personnel of the PERC. As such, the MMC shall be responsible for all operating and incidental expenses to be incurred by the PERC relative to the administration and enforcement of the said PD including honoraria and allowances for consultants and employees detailed to PERC from the different involved government agencies. The MMC, thru PERC, shall administer the collection of building permit fees through the local building officials and retain an amount not

exceeding 20% thereof to be used for the operating expenses of the different local Building Officers of Metropolitan Manila and the PERC.'

x x x x x x x x

"All of the above agencies are directed to assist the PERC in implementing an effective and standardized system for land development building/structure permits issuance in MMA; in facilitating the processing of applications for land development and building permits and projects in Metro Manila; and in coordinating and integrating all essential services in MMA as far as building/structure permits are concerned. Each agency is required to submit proposed guidelines for the proper administration of PERC to the Executive Secretary, MMC at the soonest possible time. (Underscoring supplied)." (pp. 23-24, Rollo)

It is to be noted that the Governor of the Metro Manila Commission, under subparagraph 12 of the LOI, is made responsible for the proper administration and efficient enforcement of PD 1096 within the Metro Manila Area. The clear intent is to deputize the MMC Governor as overall coordinator of the efforts to implement PD No. 1096 in Metro Manila.

LOI No. 624 should not be construed as transferring the power of administration and enforcement of PD No. 1096 within the Metro Manila Area to the MMC Governor. As stated previously, the purpose of said LOI is to implement PD No. 1096 within the Metro Manila Area. It is not intended to modify or supersede certain provisions of said Decree, such as Section 201 thereof which vests the power of administration and enforcement of the Decree in the Secretary of Public Works and Highways.

Significantly, LOI No. 624 does not have a repealing clause. On the contrary, it expressly acknowledges the authority of the Secretary of Public Works and Highways under Section 201 by specifically providing in subparagraph 1 thereof that "the Secretary shall see to it that the PERC be provided with technical supervision and guidance in the implementation of the National Building Code in the Metropolitan Manila Area" and that the Secretary shall "detail with PERC an overall MMA Building Official who shall be responsible for processing the plans and specifications of building and structure of metro significance and for the recommending to the Executive Secretary the issuance of building/structure clearance. He shall direct the NHA, CAA, MWSS, NPCC and other agencies under it, as may be necessary to assign required personnel to coordinate with PERC" (subpar. 1, par. 1; pp. 24-25, Rollo).

As a corollary to his power to enforce and administer PD 1096, the power to appoint Building Officials for the Metro Manila Area must also be vested solely in the Secretary of Public Works and Highways. The fact that the MMC has provided positions of Building Officials in its Staffing Pattern with salaries paid out of MMC funds does not make them local officials because in the performance of their functions, they are by specific provisions of PD 1096 subject to the supervision and control of the national authority, in this case, the Secretary of Public Works and Highways.

As correctly stated in Opinion No. 140, S. 1987 of the Department of Justice, the administration and enforcement of the provisions of the National Building Code is the primary concern of the national government, the said function being vested in the Secretary of Public Works and Highways, (Sec. 201, Code), a national official. Since a building official assigned to a province, city or municipality is the deputy of the Secretary of Public Works and Highways in the enforcement of the provisions of the National Building Code, he is deemed to be a national official notwithstanding that his salary is paid out of local funds.

In view of the foregoing, We adopt the opinion of Sec. Ordonez (earlier quoted) that the authority to administer and enforce the provisions of the National Building Code, and the power to appoint Building Officials throughout the country, including Metro Manila, pertain to the Secretary of Public Works and Highways and to no other

official.

WHEREFORE, the petition is GRANTED and the assailed Office Order Nos. 70 and 75 of respondent MMC Acting Governor as well as the Memorandum dated August 17, 1988 of respondent mayor are declared null and void and of no effect whatsoever. The restraining order earlier issued is hereby made permanent.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Medialdea, and Regalado, JJ., concur.

Gutierrez, Jr. and Grino-Aquino, JJ., on leave.

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