

**THE CITY OF ANGELES, HON. ANTONIO ABAD SANTOS, IN HIS
CAPACITY AS MAYOR OF ANGELES CITY, AND THE SANGGUNIANG
PANLUNGSOD OF THE CITY OF ANGELES, PETITIONERS, VS. COURT
OF APPEALS...**

G.R. No. 97882. August 28, 1996

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

In resolving this petition, the Court addressed the questions of whether a donor of open spaces in a residential subdivision can validly impose conditions on the said donation; whether the city government as donee can build and operate a drug rehabilitation center on the donated land intended for open space; and whether the said donation may be validly rescinded by the donor.

Petitioners claim they have the right to construct and operate a drug rehabilitation center on the donated land in question, contrary to the provisions stated in the amended Deed of Donation.

On the other hand, private respondent, owner/developer of the Timog Park residential subdivision in Angeles City, opposed the construction and now, the operation of the said center on the donated land, which is located within said residential subdivision.

Before us is a petition for review on certiorari assailing the Decision[1] of the Court of Appeals[2] dated October 31, 1990, which affirmed the decision[3] of the Regional Trial Court of Angeles City Branch 56,[4] dated February 15, 1989.

The Antecedents

In a Deed of Donation dated March 9, 1984, subsequently superseded by a Deed of Donation dated September 27, 1984, which in turn was superseded by an Amended Deed of Donation dated November 26, 1984, private respondent donated to the City of Angeles, 51 parcels of land situated in Barrio Pampang, City of Angeles, with an aggregate area of 50,676 square meters, more or less, part of a bigger area also belonging to private respondent. The amended deed[5] provided, among others, that:

"2. The properties donated shall be devoted and utilized solely for the site of the Angeles City Sports Center (which excludes cockfighting) pursuant to the plans to be submitted within six (6) months by the DONEE to the DONOR for the latter's approval, which approval shall not be unreasonably withheld as long as entire properties donated are developed as a Sports Complex. Any change or modification in the basic design or concept of said Sports Center must have the prior written consent of the DONOR.

"3. No commercial building, commercial complex, market or any other similar complex, mass or tenement (sic) housing/buildings(s) shall be constructed in the properties donated nor shall cockfighting, be allowed in the premises.

"4. The construction of the Sports Center shall commence within a period of one (1) year from 09 March 1984

and shall be completed within a period of five (5) years from 09 March 1984.

xxx xxx xxx

"6. The properties donated (which is more than five (5) percent of the total land area of the DONOR's subdivision) shall constitute the entire open space for DONOR's subdivision and all other lands or areas previously reserved or designated, including Lot 1 and Lot 2A of Block 72 and the whole Block 29 are dispensed with, and rendered free, as open spaces, and the DONEE hereby agrees to execute and deliver all necessary consents, approvals, endorsements, and authorizations to effect the foregoing.

7. The properties donated are devoted and described as 'open spaces' of the DONOR's subdivision, and to this effect, the DONEE, upon acceptance of this donation, releases the DONOR and/or assumes any and all obligations and liabilities appertaining to the properties donated.

8. Any substantial breach of the foregoing provisos shall entitle the DONOR to revoke or rescind this Deed of Donation, and in such eventuality, the DONEE agrees to vacate and return the premises, together with all improvements, to the DONOR peacefully without necessity of judicial action."

On July 19, 1988, petitioners started the construction of a drug rehabilitation center on a portion of the donated land. Upon learning thereof, private respondent protested such action for being violative of the terms and conditions of the amended deed and prejudicial to its interest and to those of its clients and residents. Private respondent also offered another site for the rehabilitation center. However, petitioners ignored the protest, maintaining that the construction was not violative of the terms of the donation. The alternative site was rejected because, according to petitioners, the site was too isolated and had no electric and water facilities.

On August 8, 1988, private respondent filed a complaint with the Regional Trial Court, Branch 56, in Angeles City against the petitioners, alleging breach of the conditions imposed in the amended deed of donation and seeking the revocation of the donation and damages, with preliminary injunction and/or temporary restraining order to halt the construction of the said center.

On August 10, 1988, the trial court issued a temporary restraining order to enjoin the petitioners from further proceeding with the construction of the center, which at that time was already 40% complete.

However, the trial court denied the prayer for preliminary injunction based on the prohibition in Presidential Decree No. 1818.

In their Answer with counterclaim, petitioners admitted the commencement of the construction but alleged inter alia that the conditions imposed in the amended deed were contrary to Municipal Ordinance No. 1, Series of 1962, otherwise known as the Subdivision Ordinance of the Municipality of Angeles.[6]

On October 15, 1988, private respondent filed a Motion for Partial Summary Judgment on the ground that the main defense of the petitioners was anchored on a pure question of law and that their legal position was untenable.

The petitioners opposed, contending that they had a meritorious defense as (1) private respondents had no right to dictate upon petitioners what to do with the donated land and how to do it so long as the purpose remains for public use; and (2) the cause of action of the private respondent became moot and academic when the Angeles City Council repealed the resolution providing for the construction of said drug rehabilitation center and adopted a new resolution changing the purpose and usage of said center to a 'sports development and youth center' in order to conform with the sports complex project constructed on the donated land.

On February 15, 1989, the trial court rendered its decision, in relevant part reading as follows:

"x x x the Court finds no inconsistency between the conditions imposed in the Deeds of Donation and the provision of the Subdivision Ordinance of the City of Angeles requiring subdivisions in Angeles City to

reserve at least one (1) hectare in the subdivision as suitable sites known as open spaces for parks, playgrounds, playlots and/or other areas to be dedicated to public use. On the contrary, the condition requiring the defendant city of Angeles to devote and utilize the properties donated to it by the plaintiff for the site of the Angeles City Sports Center conforms with the requirement in the Subdivision Ordinance that the subdivision of the plaintiff shall be provided with a playground or playlot, among others.

On the other hand the term "public use" in the Subdivision Ordinance should not be construed to include a Drug Rehabilitation Center as that would be contrary to the primary purpose of the Subdivision Ordinance requiring the setting aside of a portion known as "Open Space" for park, playground and playlots, since these are intended primarily for the benefit of the residents of the subdivision. While laudable to the general public, a Drug Rehabilitation Center in a subdivision will be a cause of concern and constant worry to its residents.

As to the third issue in paragraph (3), the passage of the Ordinance changing the purpose of the building constructed in the donated properties from a Drug Rehabilitation Center to a Sports Center comes too late. It should have been passed upon the demand of the plaintiff to the defendant City of Angeles to stop the construction of the Drug Rehabilitation Center, not after the complaint was filed.

Besides, in seeking the revocation of the Amended Deed of Donation, plaintiff also relies on the failure of the defendant City of Angeles to submit the plan of the proposed Sports Center within six (6) months and construction of the same within five years from March 9, 1984, which are substantial violations of the conditions imposed in the Amended Deed of Donation."

The dispositive portion of the RTC decision reads:

"WHEREFORE, judgment is hereby rendered:

- (1) Enjoining defendants, its officers, employees and all persons acting on their behalf to perpetually cease and desist from constructing a Drug Rehabilitation Center or any other building or improvement on the Donated Land.
- (2) Declaring the amended Deed of Donation revoked and rescinded and ordering defendants to peacefully vacate and return the Donated Land to plaintiff, together with all the improvements existing thereon. And,
- (3) Denying the award of compensatory or actual and exemplary damages including attorney's fees.

NO PRONOUNCEMENT AS TO COST."

In March 1989, petitioners filed their Notice of Appeal. On April 15, 1989, while the appeal was pending, petitioners inaugurated the Drug Rehabilitation Center.[7]

On April 26, 1991, the respondent Court rendered the assailed Decision affirming the ruling of the trial court. Subsequently, the petitioners' motion for reconsideration was also denied for lack of merit.

Consequently, this Petition for Review.

The Issues

The key issues[8] raised by petitioners may be restated as follows:

- I. Whether a subdivision owner/developer is legally bound under Presidential Decree No. 1216 to donate to the city or municipality the "open space" allocated exclusively for parks, playground and recreational use.
- II. Whether the percentage of the "open space" allocated exclusively for parks, playgrounds and recreational use is to be based on the "gross area" of the subdivision or on the total area reserved for "open space."
- III. Whether private respondent as subdivision owner/developer may validly impose conditions in the Amended Deed of Donation regarding the use of the "open space" allocated exclusively for parks and

playgrounds.

IV. Whether or not the construction of the Drug Rehabilitation Center on the donated "open space" may be enjoined.

V. Whether the donation by respondent as subdivision owner/developer of the "open space" of its subdivision in favor of petitioner City of Angeles may be revoked for alleged violation of the Amended Deed of Donation.

Central to this entire controversy is the question of whether the donation of the open space may be revoked at all.

First Issue: Developer Legally Bound to Donate Open Space

The law involved in the instant case is Presidential Decree No. 1216, dated October 14, 1977,[9] which reads:

"PRESIDENTIAL DECREE NO. 1216

Defining 'Open Space' In Residential Subdivisions And Amending Section 31 Of Presidential Decree No. 957 Requiring Subdivision Owners To Provide Roads, Alleys, Sidewalks And Reserve Open Space For Parks Or Recreational Use.

WHEREAS, there is a compelling need to create and maintain a healthy environment in human settlements by providing open spaces, roads, alleys and sidewalks as may be deemed suitable to enhance the quality of life of the residents therein;

WHEREAS, such open spaces, roads, alleys and sidewalks in residential subdivisions are for public use and are, therefore, beyond the commerce of men;

WHEREAS, pursuant to Presidential Decree No. 953 at least thirty per cent (30%) of the total area of a subdivision must be reserved, developed and maintained as open space for parks and recreational areas, the cost of which will ultimately be borne by the lot buyers which thereby increase the acquisition price of subdivision lots beyond the reach of the common mass;

WHEREAS, thirty percent (30%) required open space can be reduced to a level that will make the subdivision industry viable and the price of residential lots within the means of the low income group at the same time preserve the environmental and ecological balance through rational control of land use and proper design of space and facilities;

WHEREAS, pursuant to Presidential Decree No. 757, government efforts in housing, including resources, functions and activities to maximize results have been concentrated into one single agency, namely, the National Housing Authority;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree:

SECTION 1. For purposes of this Decree, the term 'open space' shall mean an area reserved exclusively for parks, playgrounds, recreational uses, schools, roads, places of worship, hospitals, health centers, barangay centers and other similar facilities and amenities.

SECTION 2. Section 31 of Presidential Decree No. 957 is hereby amended to read as follows:

'Section 31. Roads, Alleys, Sidewalks and Open Spaces — The owner as developer of a subdivision shall provide adequate roads, alleys and sidewalks. For subdivision projects one (1) hectare or more, the owner or developer shall reserve thirty per cent (30%) of the gross area for open space. Such open space shall have the following standards allocated exclusively for parks, playgrounds and recreational use:

a. 9% of gross area for high density or social housing (66 to 100 family lots per gross hectare).

- b. 7% of gross area for medium-density or economic housing (21 to 65 family lots per gross hectare).
- c. 3.5% of gross area for low-density or open market housing (20 family lots and below per gross hectare).

These areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable. The plans of the subdivision project shall include tree planting on such parts of the subdivision as may be designated by the Authority.

Upon their completion certified to by the Authority, the roads, alleys, sidewalks and playgrounds shall be donated by the owner or developer to the city or municipality and it shall be mandatory for the local governments to accept provided, however, that the parks and playgrounds may be donated to the Homeowners Association of the project with the consent of the city or municipality concerned. No portion of the parks and playgrounds donated thereafter shall be converted to any other purpose or purposes.'

SECTION 3. Sections 2 and 5 of Presidential Decree No. 953 are hereby repealed and other laws, decrees, executive orders, institutions, rules and regulations or parts thereof inconsistent with these provisions are also repealed or amended accordingly.

SECTION 4. This Decree shall take effect immediately."

Pursuant to the wording of Sec. 31 of P.D. 957 as above amended by the aforequoted P.D. No. 1216, private respondent is under legal obligation to donate the open space exclusively allocated for parks, playgrounds and recreational use to the petitioner.

This can be clearly established by referring to the original provision of Sec. 31 of P.D. 957, which reads as follows:

"SECTION 31. Donation of roads and open spaces to local government. - The registered owner or developer of the subdivision or condominium project, upon completion of the development of said project may, at his option, convey by way of donation the roads and open spaces found within the project to the city or municipality wherein the project is located. Upon acceptance of the donation by the city or municipality concerned, no portion of the area donated shall thereafter be converted to any other purpose or purposes unless after hearing, the proposed conversion is approved by the Authority." (Italics supplied)

It will be noted that under the aforequoted original provision, it was optional on the part of the owner or developer to donate the roads and open spaces found within the project to the city or municipality where the project is located. Elsewise stated, there was no legal obligation to make the donation.

However, said Sec. 31 as amended now states in its last paragraph:

"Upon their completion x x x, the roads, alleys, sidewalks and playgrounds shall be donated by the owner or developer to the city or municipality and it shall be mandatory for the local government to accept; provided, however, that the parks and playgrounds may be donated to the Homeowners Association of the project with the consent of the city or municipality concerned. x x x."

It is clear from the aforequoted amendment that it is no longer optional on the part of the subdivision owner/developer to donate the open space for parks and playgrounds; rather there is now a legal obligation to donate the same. Although there is a proviso that the donation of the parks and playgrounds may be made to the homeowners association of the project with the consent of the city of municipality concerned, nonetheless, the owner/developer is still obligated under the law to donate. Such option does not change the mandatory character of the provision. The donation has to be made regardless of which donee is picked by the owner/developer. The consent requirement before the same can be donated to the homeowners' association emphasizes this point.

Second Issue: Percentage of Area for Parks and Playgrounds

Petitioners contend that the 3.5% to 9% allotted by Sec. 31 for parks, playgrounds and recreational uses should be based on the gross area of the entire subdivision, and not merely on the area of the open space alone, as contended by private respondent and as decided by the respondent Court.[10]

The petitioners are correct. The language of Section 31 of P.D. 957 as amended by Section 2 of P.D. 1216 is wanting in clarity and exactitude, but it can be easily inferred that the phrase "gross area" refers to the entire subdivision area. The said phrase was used four times in the same section in two sentences, the first of which reads:

"x x x For subdivision projects one (1) hectare or more, the owner or developer shall reserve thirty per cent (30%) of the gross area for open space. x x x."

Here, the phrase "30% of the gross area" refers to the total area of the subdivision, not of the open space. Otherwise, the definition of "open space" would be circular. Thus, logic dictates that the same basis be applied in the succeeding instances where the phrase "open space" is used, i.e., "9% of gross area . . . 7% of gross area . . . 3.5% of gross area . . ." Moreover, we agree with petitioners that construing the 3.5% to 9% as applying to the totality of the open space would result in far too small an area being devoted for parks, playgrounds, etc., thus rendering meaningless and defeating the purpose of the statute. This becomes clear when viewed in the light of the original requirement of P.D. 953 ("Requiring the Planting of Trees in Certain Places, etc."), Section 2 of which reads:

"Sec. 2. Every owner of land subdivided into residential/commercial/industrial lots after the effectivity of this Decree shall reserve, develop and maintain not less than thirty percent (30%) of the total area of the subdivision, exclusive of roads, service streets and alleys, as open space for parks and recreational areas.

No plan for a subdivision shall be approved by the Land Registration Commission or any office or agency of the government unless at least thirty percent (30%) of the total area of the subdivision, exclusive of roads, service streets and alleys, is reserved as open space for parks and recreational areas x x x."

To our mind, it is clear that P.D. 1216 was an attempt to achieve a happy compromise and a realistic balance between the imperatives of environmental planning and the need to maintain economic feasibility in subdivision and housing development, by reducing the required area for parks, playgrounds and recreational uses from thirty percent (30%) to only 3.5% - 9% of the entire area of the subdivision.

Third Issue: Imposition of Conditions in Donation of Open Space

Petitioners argue that since the private respondent is required by law to donate the parks and playgrounds, it has no right to impose the condition in the Amended Deed of Donation that "the properties donated shall be devoted and utilized solely for the site of the Angeles City Sports Center." It cannot prescribe any condition as to the use of the area donated because the use of the open spaces is already governed by P.D. 1216. In other words, the donation should be absolute. Consequently, the conditions in the amended deed which were allegedly violated are deemed not written. Such being the case, petitioners cannot be considered to have committed any violation of the terms and conditions of the said amended deed, as the donation is deemed unconditional, and it follows that there is no basis for revocation of the donation.

However, the general law on donations does not prohibit the imposition of conditions on a donation so long as the conditions are not illegal or impossible.[11]

In regard to donations of open spaces, P.D. 1216 itself requires among other things that the recreational areas to be donated be based, as aforementioned, on a percentage (3.5%, 7%, or 9%) of the total area of the subdivision

depending on whether the subdivision is low -, medium -, or high-density. It further declares that such open space devoted to parks, playgrounds and recreational areas are non-alienable public land and non-buildable. However, there is no prohibition in either P.D. 957 or P.D. 1216 against imposing conditions on such donation.

We hold that any condition may be imposed in the donation, so long as the same is not contrary to law, morals, good customs, public order or public policy. The contention of petitioners that the donation should be unconditional because it is mandatory has no basis in law. P.D. 1216 does not provide that the donation of the open space for parks and playgrounds should be unconditional. To rule that it should be so is tantamount to unlawfully expanding the provisions of the decree.[12]

In the case at bar, one of the conditions imposed in the Amended Deed of Donation is that the donee should build a sports complex on the donated land. Since P.D. 1216 clearly requires that the 3.5% to 9% of the gross area allotted for parks and playgrounds is "non-buildable," then the obvious question arises whether or not such condition was validly imposed and is binding on the donee. It is clear that the "non-buildable" character applies only to the 3.5% to 9% area set by law. If there is any excess land over and above the 3.5% to 9% required by the decree, which is also used or allocated for parks, playgrounds and recreational purposes, it is obvious that such excess area is not covered by the non-buildability restriction. In the instant case, if there be an excess, then the donee would not be barred from developing and operating a sports complex thereon, and the condition in the amended deed would then be considered valid and binding.

To determine if the over 50,000 square meter area donated pursuant to the amended deed would yield an excess over the area required by the decree, it is necessary to determine under which density category the Timog Park subdivision falls.

If the subdivision falls under the low density or open market housing category, with 20 family lots or below per gross hectare, the developer will need to allot only 3.5% of gross area for parks and playgrounds, and since the donated land constitutes "more than five (5) percent of the total land area of the subdivision,[13] there would therefore be an excess of over 1.5% of gross area which would not be non-buildable. Petitioners, on the other hand, alleged (and private respondent did not controvert) that the subdivision in question is a "medium-density or economic housing" subdivision based on the sizes of the family lots donated in the amended deed,[14] for which category the decree mandates that not less than 7% of gross area be set aside. Since the donated land constitutes only a little more than 5% of the gross area of the subdivision, which is less than the area required to be allocated for non-buildable open space, therefore there is no "excess land" to speak of. This then means that the condition to build a sports complex on the donated land is contrary to law and should be considered as not imposed.

Fourth Issue: Injunction vs. Construction of the Drug Rehabilitation Center

Petitioners argue that the court cannot enjoin the construction of the drug rehabilitation center because the decision of the trial court came only after the construction of the center was completed and, based on jurisprudence, there can be no injunction of events that have already transpired.[15]

Private respondent, on the other hand, counters that the operation of the center is a continuing act which would clearly cause injury to private respondent, its clients, and residents of the subdivision, and thus, a proper subject of injunction.[16] Equity should move in to warrant the granting of the injunctive relief if persistent repetition of the wrong is threatened.[17]

In light of Sec. 31 of P.D. 957, as amended, declaring the open space for parks, playgrounds and recreational area as non-buildable, it appears indubitable that the construction and operation of a drug rehabilitation center on the land in question is a continuing violation of the law and thus should be enjoined.

Furthermore, the factual background of this case warrants that this Court rule against petitioners on this issue. We agree with and affirm the respondent Court's finding that petitioners committed acts mocking the judicial system.[18]

"x x x When a writ of preliminary injunction was sought for by the appellee [private respondent] to enjoin the appellants [petitioners herein] from further continuing with the construction of the said center, the latter resisted and took refuge under the provisions of Presidential Decree No. 1818 (which prohibits writs of preliminary injunction) to continue with the construction of the building. Yet, the appellants also presented 'City Council Resolution No. 227 which allegedly repealed the previous Resolution authorizing the City Government to construct a Drug Rehabilitation Center on the donated property, by 'changing the purpose and usage of the Drug Rehabilitation Center to Sports Development and Youth Center to make it conform to the Sports Complex Project therein.' Under this Resolution No. 227, the appellants claimed that they have abandoned all plans for the construction of the Drug Rehabilitation Center. Nonetheless, when judgment was finally rendered on February 15, 1989, the appellants were quick to state that they have not after all abandoned their plans for the center as they have in fact inaugurated the same on April 15, 1989. In plain and simple terms, this act is a mockery of our judicial system perpetrated by the appellants. For them to argue that the court cannot deal on their Drug Rehabilitation Center is not only preposterous but also ridiculous.

It is interesting to observe that under the appealed decision the appellants and their officers, employees and all other persons acting on their behalf were perpetually enjoined to cease and desist from constructing a Drug Rehabilitation Center on the donated property. Under Section 4 of Rule 39 of the Rules of Court, it is provided that:

"Section 4 -- A judgment in an action for injunction shall not be stayed after its rendition and before an appeal is taken or during the pendency of an appeal."

Accordingly, a judgment restraining a party from doing a certain act is enforceable and shall remain in full force and effect even pending appeal. In the case at bar, the cease and desist order therefore still stands. Appellants' persistence and continued construction and, subsequent, operation of the Drug Rehabilitation Center violate the express terms of the writ of injunction lawfully issued by the lower court."

This Court finds no cogent reason to reverse the above mentioned findings of the respondent court. The allegation of the petitioners that the construction of the center was finished before the judgment of the trial court was rendered deserves scant consideration because it is self-serving and is completely unsupported by other evidence.

The fact remains that the trial court rendered judgment enjoining the construction of the drug rehabilitation center, revoking the donation and ordering the return of the donated land. In spite of such injunction, petitioners publicly flaunted their disregard thereof with the subsequent inauguration of the center on August 15, 1989. The operation of the center, after inauguration, is even more censurable.

Fifth Issue: Revocation of a Mandatory Donation Because of Non-compliance With an Illegal Condition

The private respondent contends that the building of said drug rehabilitation center is violative of the Amended Deed of Donation. Therefore, under Article 764 of the New Civil Code and stipulation no. 8 of the amended deed, private respondent is empowered to revoke the donation when the donee has failed to comply with any of the conditions imposed in the deed.

We disagree. Article 1412 of the Civil Code which provides that:

"If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

"(1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking";

comes into play here. Both petitioners and private respondents are in violation of P.D. 957 as amended, for donating and accepting a donation of open space less than that required by law, and for agreeing to build and operate a sports complex on the non-buildable open space so donated; and petitioners, for constructing a drug rehabilitation center on the same non-buildable area.

Moreover, since the condition to construct a sports complex on the donated land has previously been shown to be contrary to law, therefore, stipulation No. 8 of the amended deed cannot be implemented because (1) no valid stipulation of the amended deed had been breached, and (2) it is highly improbable that the decree would have allowed the return of the donated land for open space under any circumstance, considering the non-alienable character of such open space, in the light of the second Whereas clause of P.D. 1216 which declares that "xxx such open spaces, roads, alleys and sidewalks in residential subdivisions are for public use and are, therefore, beyond the commerce of men."

Further, as a matter of public policy, private respondent cannot be allowed to evade its statutory obligation to donate the required open space through the expediency of invoking petitioners' breach of the aforesaid condition. It is a familiar principle that the courts will not aid either party to enforce an illegal contract, but will leave them both where they find them. Neither party can recover damages from the other arising from the act contrary to law, or plead the same as a cause of action or as a defense. Each must bear the consequences of his own acts.[19]

There is therefore no legal basis whatsoever to revoke the donation of the subject open space and to return the donated land to private respondent. The donated land should remain with the donee as the law clearly intended such open spaces to be perpetually part of the public domain, non-alienable and permanently devoted to public use as such parks, playgrounds or recreation areas.

Removal/Demolition of Drug Rehabilitation Center

Inasmuch as the construction and operation of the drug rehabilitation center has been established to be contrary to law, the said center should be removed or demolished. At this juncture, we hasten to add that this Court is and has always been four-square behind the government's efforts to eradicate the drug scourge in this country. But the end never justifies the means, and however laudable the purpose of the construction in question, this Court cannot and will not countenance an outright and continuing violation of the laws of the land, especially when committed by public officials.

In theory, the cost of such demolition, and the reimbursement of the public funds expended in the construction thereof, should be borne by the officials of the City of Angeles who ordered and directed such construction. This Court has time and again ruled that public officials are not immune from damages in their personal capacities arising from acts done in bad faith. Otherwise stated, a public official may be liable in his personal capacity for whatever damage he may have caused by his act done with malice and in bad faith or beyond the scope of his authority or jurisdiction.[20] In the instant case, the public officials concerned deliberately violated the law and persisted in their violations, going so far as attempting to deceive the courts by their pretended change of purpose and usage for the center, and "making a mockery of the judicial system." Indisputably, said public officials acted beyond the scope of their authority and jurisdiction and with evident bad faith. However, as noted by the trial court,[21] the petitioners mayor and members of the Sangguniang Panlungsod of Angeles City were sued only in their official capacities, hence, they could not be held personally liable without first giving them their day in court. Prevailing jurisprudence[22] holding that public officials are personally liable for damages arising from illegal acts done in bad faith are premised on said officials having been sued both in their official and personal capacities.

After due consideration of the circumstances, we believe that the fairest and most equitable solution is to have the City of Angeles, donee of the subject open space and, ostensibly, the main beneficiary of the construction and

operation of the proposed drug rehabilitation center, undertake the demolition and removal of said center, and if feasible, recover the cost thereof from the city officials concerned.

WHEREFORE, the assailed Decision of the Court of Appeals is hereby MODIFIED as follows:

(1) Petitioners are hereby ENJOINED perpetually from operating the drug rehabilitation center or any other such facility on the donated open space.

(2) Petitioner City of Angeles is ORDERED to undertake the demolition and removal of said drug rehabilitation center within a period of three (3) months from finality of this Decision, and thereafter, to devote the said open space for public use as a park, playground or other recreational use.

(3) The Amended Deed of Donation dated November 26, 1984 is hereby declared valid and subsisting, except that the stipulations or conditions therein concerning the construction of the Sports Center or Complex are hereby declared void and as if not imposed, and therefore of no force and effect.

No costs.

SO ORDERED.

Narvasa, C.J. (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 42-50.

[2] Twelfth Division, J. Bonifacio A. Cacdac, Jr., ponente, and JJ. Reynato S. Puno (chairman) and Salome A. Montoya, concurring.

[3] Rollo, pp. 93-106.

[4] Judge Carlos D. Rustia, presiding.

[5] Rollo, pp. 54-62.

[6] Section 10 of the said Subdivision Ordinance of the Municipality of Angeles reads:

"Open Spaces Dedicated to Public Use-Subdivisions in the Municipality containing an area of at least one (1) hectare shall be provided with suitable sites known as open spaces for parks, playgrounds, playlots and/or other areas to be dedicated to public use, which areas shall comprise at least five (5) per cent of the gross area of the subdivision. Open spaces so dedicated for public use shall be consolidated as much as possible and not broken into small odd-shaped parcels of land, and shall be conveniently located for maximum utility. Should the subdivision so elect, he may turn over and transfer free of charge the title to said open space to the Municipal Government after which the government shall assume the responsibility of maintaining the said areas. Provided, that the government reserves the right to reject the transfer of any area specified in this section if in its opinion the site has not been developed in such manner as to make the same suitable for the use it is intended." (Italics supplied)

[7] Court of Appeals' Decision, p. 5; Rollo, p. 46.

[8] Rollo, pp. 20-21.

[9] Published in the Official Gazette (Vol. 74, No. 2, January 9, 1978, pp. 257-259.

[10] The Court of Appeals said:

"x x x the obligation to donate however, does not cover the entire open space but only that 3.5% to 9% of the open

space which is exclusively reserved to parks and playgrounds. x x x." (Rollo, p. 48).

[11] Art. 727, Civil Code.

[12] *Palanca vs. City of Manila*, 41 Phil. 125, 130, October 27, 1920 and *Republic Flour Mills, Inc. vs. Commissioner of Customs*, 39 SCRA 268, 274, May 31, 1971.

[13] Vide par. 6 of Amended Deed of Donation.

[14] The 51 donated lots ranged in size from 287 to 640 square meters with the average size of a family lot being 463.5 square meters. The average size or area of a family lot should be at least 500 square meters to have a density of 20 family lots or below per gross hectare. The subdivision in question obviously falls under the medium-density or economic housing category.

[15] *Aragones vs. Subido*, 25 SCRA 95, 101, September 23, 1968.

[16] *Dayrit vs. De Los Santos*, 18 Phil. 275, 280, January 11, 1911.

[17] *Rustia vs. Franco*, 41 Phil. 280, 283-285, December 13, 1920.

[18] CA Decision, pp. 5-6; Rollo, pp. 46-47.

[19] *Teja vs. Intermediate Appellate Court*, 148 SCRA 347, March 10, 1987.

[20] See for instance, *Vidad vs. RTC of Negros Oriental*, Br. 42, 227 SCRA 271, October 18, 1993; *M.H. Wylie vs. Rarang*, 209 SCRA 357, May 28, 1992; *Orocio vs. Commission On Audit*, 213 SCRA 109, August 31, 1992.

[21] RTC Decision, p. 7; records, p. 113.

[22] Aside from the cases cited in footnote no. 20, consider also *Rama vs. Court of Appeals*, 148 SCRA 496, March 16, 1987, and *San Luis vs. Court of Appeals*, 174 SCRA 258, June 26, 1989.

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