THE REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE OFFICE OF THE OMBUDSMAN, MA. MERCEDITAS N. GUTIERREZ, IN HER CAPACITY AS THE OMBUDSMAN, PETITIONER, VS. RUFINO V. MIJARES, RO...

G.R. NOS. 170615-16. July 09, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari are the Decision[1] dated June 23, 2005, and the Resolution[2] dated November 25, 2005, of the Court of Appeals in CA-G.R. SP Nos. 76700 and 76484. The appellate court had reversed and set aside the Decision[3] dated March 5, 2002, of the Office of the Ombudsman in OMB-ADM-0-00-0336 and ordered (1) the reinstatement of respondents Romeo Querubin and Rufino V. Mijares to their respective positions in the government service with full payment of backwages and other benefits, and (2) the full payment of backwages and other benefits of respondent Alfredo M. Ruba.

The administrative case against respondents stemmed from a controversy involving a parcel of land owned by the Philippine Communications Satellite Corporation (PHILCOMSAT) located in Barangay Pinugay, Baras, Rizal. Claiming that the subject land is covered by the Comprehensive Agrarian Reform Program (CARP), members of the Southern Pinugay Farmers Multi-Purpose Cooperative, Inc. (SPFMPCI) occupied about 100 hectares thereof. They introduced improvements such as houses, fruit-bearing trees, vegetables, palay and other crops.

PHILCOMSAT filed a protest before the Department of Agrarian Reform (DAR) claiming that the land was exempt from CARP coverage since it was an integral part of the Philippine Space Communications Operation. The DAR denied the protest. PHILCOMSAT then filed a petition for review with the Court of Appeals.

During the pendency of the petition, respondent Mayor Roberto G. Ferrera issued an order[4] directing respondent Engr. Romeo Querubin to demolish the said houses and improvements. Meanwhile, in a pending case between PHILCOMSAT and SPFMPCI before the Commission on the Settlement of Land Problems, respondent Commissioner Rufino V. Mijares issued an order[5] interposing no objection to the order of demolition. Ferrera then directed Querubin to implement the order. He also sought police assistance.

On March 24, 2000, the houses and improvements on the subject land were demolished and destroyed. As a result, SPFMPCI filed an administrative case for grave misconduct and harassment against respondents before the Office of the Ombudsman.

In their Joint Counter-Affidavit,[6] respondents argued that the SPFMPCI members were not in the list of occupants/potential farmer-beneficiaries of PHILCOMSAT landholdings on file with the Municipal Agrarian Reform Office (MARO) and Provincial Agrarian Reform Office (PARO). Thus, they were illegal entrants whose houses and improvements constituted a nuisance that may be abated. More importantly, the houses and improvements were constructed without the required building permits under Section 301[7] of Presidential Decree

No. 1096 or the National Building Code.[8] Thus, its summary demolition was justified under Section 27,[9] Article VII of Republic Act No. 7279 or the Urban Development and Housing Act of 1992.[10]

In the meantime, on November 23, 2001, the Court of Appeals rendered a decision in the petition for review of the DAR decision finding the subject land exempt from CARP coverage.[11] This was later affirmed by the Supreme Court in a Decision dated June 15, 2006.[12]

Meanwhile on March 5, 2002, the Office of the Ombudsman declared the demolition unjustified. It noted that the demolished houses and improvements were traditional indigenous family dwellings intended for the use and occupancy by the owner's family only and made of native materials, the total cost of which does not exceed P15,000 and deemed exempted from the payment of building permit fees. It added that the fact that the same were constructed without the necessary building permits do not automatically necessitate its demolition since only dangerous or ruinous buildings or structures may be ordered repaired, vacated or demolished under Section 215[13] of P.D. No. 1096. In this case, the demolished houses and improvements were neither dangerous nor ruinous. Further, the same cannot be summarily demolished under Section 27, Article VII of Rep. Act No. 7279 since the law does not apply to rural lands and lands under CARP coverage. In conclusion, the Office of the Ombudsman held respondents guilty of grave misconduct for their flagrant disregard of established rules, thus:

> WHEREFORE, the foregoing premises considered, this Office hereby find[s]:
>
> (1) Respondents RUFINO V. MIJARES, Commissioner, Commission on the Settlement of Land Problems with office address at Aries Bldg., 103 Quezon Avenue, Quezon City; MAYOR ROBERT FERRERA, Municipal Mayor, Baras, Rizal; ENGR. ROMEO QUERUBIN, Municipal Engineer, Baras, Rizal, and ALFREDO RUBA, Barangay Chairman of Barangay Pinugay, Baras, Rizal GUILTY of the administrative offense of GRAVE MISCONDUCT with the penalty of DISMISSAL FROM THE SERVICE with FORFEITURE OF RETIREMENT BENEFITS, CANCELLATION OF ELIGIBILITY, AND THE PERPETUAL DISQUALIFICATION FOR REEMPLOYMENT IN THE GOVERNMENT SERVICE pursuant to Section 25 of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989 and the pertinent provisions of Civil Service Commission Resolution No. 991936 otherwise known as the "UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE".
>
> (2) Respondents LUIZO TICMAN, PNP Superintendent, Provincial Director of the Rizal Provincial Office and ORLANDO PAZ, Police Inspector, Baras, Rizal Police Station are hereby EXONERATED and the case against them DISMISSED.
>
> (3) The Governor of the Province of Rizal, the Secretary of the Department of Interior and Local Government and the Secretary of the Department of Justice are hereby directed to immediately implement this Decision in accordance with law and to inform this Office of their action within thirty (30) days upon receipt [hereof].
>
> SO ORDERED.[14]

Mijares, Ferrera and Ruba filed a joint motion for reconsideration while Querubin filed a separate motion for reconsideration. Both motions were denied. Thus, they filed petitions for review with the Court of Appeals which were later consolidated.

On June 23, 2005, the appellate court ruled that: First, the order of demolition was based solely on the failure of the SPFMPCI members to secure the necessary building permits to construct the houses and improvements. According to the order, this violated Section 301 of P.D. No. 1096 thereby warranting summary demolition under Section 27, Article VII of Rep. Act No. 7279. Second, respondents presented a list of the SPFMPCI members whose houses and improvements were demolished as well as a list of occupants/potential farmer-beneficiaries of PHILCOMSAT landholdings on file with the MARO and PARO. None of the SPFMPCI members was in the list

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of occupants/potential farmer-beneficiaries of PHILCOMSAT landholdings. Thus, they are not the owners or bona fide occupants of the subject land and may be summarily evicted therefrom. Third, Section 28[15] of Rep. Act No. 7279 which sets the guidelines in executing eviction or demolition orders involving underprivileged and homeless citizens does not apply to the eviction or demolition of professional squatters. Neither are they entitled to the benefits of resettlement and/or relocation under Rep. Act No. 7279. The mere identification of persons or groups as professional squatters or squatting syndicates is sufficient authority for the local government unit concerned to summarily evict them and to demolish their dwellings or structures as well as to disqualify them from availing the benefits of Rep. Act No. 7279.

The decretal portion of the Court of Appeals' decision reads:

> WHEREFORE, the petitions are GRANTED. The assailed decision of the Office of the Ombudsman dated March 5, 2002, as well as the order dated February 17, 2003 in OMB-ADM-0-00-0336 are hereby REVERSED and SET ASIDE. Petitioners Romeo Querubin and Rufino V. Mijares are hereby REINSTATED immediately to their respective positions in the government service, more particularly in the Office of the Mayor, Municipality of Baras, Rizal and the Commission on the Settlement of Land Problems (COSLAP), with full payment of backwages and other benefits upon finality of this decision. Petitioner Alfredo Ruba, who was re-elected as Barangay Chairman of Pinugay, Baras, Rizal in the 2002 barangay election, is likewise entitled to full payment of backwages and other benefits upon the finality of this decision.[16]
>
> SO ORDERED.[17]

Dissatisfied, the Office of the Ombudsman appealed to this Court raising the following issues:

> I.
> WHETHER OR NOT THE SUMMARY DEMOLITION OF THE HOUSES OWNED BY FARMER-MEMBERS OF THE SPFMPCI WAS VALID UNDER R.A. 7279 AND P.D. 1096.
>
> II.
> WHETHER OR NOT RESPONDENTS ARE GUILTY OF GRAVE MISCONDUCT.
>
> III.
> WHETHER OR NOT THE HONORABLE COURT OF APPEALS' DECISION REVERSING THE DECISION OF THE OMBUDSMAN IS VALID.[18]

There are two issues for our resolution: first, whether the summary demolition of the houses and improvements was justified under Rep. Act No. 7279 and P.D. No. 1096; and second, whether respondents were guilty of grave misconduct.

The Office of the Ombudsman contends that respondents acted in bad faith in proceeding with the demolition although they knew that Rep. Act No. 7279 and P.D. No. 1096 were inapplicable. Rep. Act No. 7279 applies only to urbanized areas and does not include the subject land which is under CARP coverage. Respondents also failed to follow the prescribed guidelines in carrying out a demolition. On the other hand, P.D. No. 1096 exempts from the payment of building permit fees traditional indigenous family dwellings such as the demolished houses and improvements in this case. Likewise, only dangerous or ruinous buildings or structures may be ordered repaired, vacated or demolished. The Office of the Ombudsman concludes that respondents were guilty of grave misconduct.

Respondents Mijares, Ferrera and Ruba counter that they were charged with violating Rep. Act No. 7279. If this law is inapplicable to the instant case, then they have no liability at all. They add that in the criminal case against them, the Office of the Ombudsman recognized that the SPFMPCI members were professional squatters.[19] They ratiocinate that as such, they should be summarily abated whether the subject land was urbanized or not.

They also argue that even if Rep. Act No. 7279 was inapplicable, they enforced the demolition in good faith. On the other hand, respondent Querubin reiterates that the SPFMPCI members were professional squatters who are not entitled to protection under either Rep. Act No. 7279 or P.D. No. 1096.

It bears stressing that in administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence does not necessarily import preponderance of evidence as is required in an ordinary civil case; rather, it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[20] A thorough examination of the records of this case reveals that such quantum of proof was not met here.

Foremost, we find the reliance of both parties on the provisions of Rep. Act No. 7279 and P.D. No. 1096 to determine the propriety of the demolition implemented by respondents, misplaced.

Rep. Act No. 7279 covers lands in urban and urbanizable areas, including existing areas for priority development, zonal improvement sites, slum improvement and resettlement sites, and in other areas that may be identified by the local government units as suitable for socialized housing.[21] On the other hand, P.D. No. 1096 applies to the design, location, sitting, construction, alteration, repair, conversion, use, occupancy, maintenance, moving, demolition of, and addition to public and private buildings and structures, except traditional indigenous family dwellings as defined therein.[22]

The parcel of land involved in this case hosts the Philippine Space Communications Center which consists of a satellite earth station that serves as the communications gateway of the Philippines to more than two-thirds of the world.[23] It was declared by P.D. No. 1845,[24] as amended by P.D. No. 1848,[25] as a security zone to ensure its security and uninterrupted operation considering the vital role of the earth station in the country's telecommunications and national development.[26] The law also placed it under the jurisdiction of the Ministry (now Department) of National Defense which has the power and the authority to determine who can occupy the areas within the security zone, and how the lands shall be utilized.[27]

Clearly, P.D. Nos. 1845 and 1848 should govern notwithstanding the provisions of Rep. Act No. 7279 and P.D. No. 1096 since the former laws have specific reference to the use and occupation of the parcel of land in this case.

Based on these laws, we find the demolition implemented by respondents in order. The SPFMPCI members occupied and introduced improvements in the parcel of land under no right, title or vested interest whatsoever. They never secured the prior written permission of the Secretary of National Defense as required by law. Although the land was initially placed under CARP coverage and they claimed to be farmer-beneficiaries, they were not included in the list of occupants/potential farmer-beneficiaries of PHILCOMSAT landholdings on file with the MARO and PARO.[28] In short, the SPFMPCI members never controverted the evidence presented by respondents that they (the SPFMPCI members) were illegal occupants of the land. Interestingly, even the Office of the Ombudsman recognized in the criminal case against respondents that the SPFMPCI members were professional squatters.

If under Rep. Act No. 7279, demolition and eviction are allowed when individuals have been identified as professional squatters and squatting syndicates[29] or when they occupy danger areas and other public places,[30] and under P.D. No. 1096, they construct dangerous and ruinous buildings or structures, [31] then with more reason the SPFMPCI members should be summarily evicted and their structures and dwellings demolished. The parcel of land involved in this case is a security zone whose operations must be protected from any form of disruption. It must be protected from all types of squatters, including the SPFMPCI members, who might create danger to a very important national telecommunications facility.

Having said that, we do not find respondents guilty of grave misconduct. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. And when the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are manifest, the public officer shall be liable for grave misconduct.[32]

Respondents rightfully determined the occupation by the SPFMPCI members unauthorized (albeit on a different basis). As the Court of Appeals observed, respondents also presented a list of settlers who were affected by the demolition. The production of such list was made to support their claim that they notified the SPFMPCI members of the demolition and that a conference was held prior thereto.[33] Had respondents been impelled by ill motive, they would not have taken measures to properly identify who were legal occupants and who were squatters in the parcel of land in this case. Clearly, respondents acted within the limits of the law when they implemented the demolition.

WHEREFORE, the petition is DENIED. The Decision dated June 23, 2005 and the Resolution dated November 25, 2005 of the Court of Appeals in CA-G.R. SP Nos. 76700 and 76484 are AFFIRMED.

SO ORDERED.

Carpio Morales, Chico-Nazario,[*] Leonardo-De Castro,[**] and Brion, JJ., concur.

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[*] Designated member of the Second Division per Special Order No. 658.

[**] Designated member of the Second Division per Special Order No. 635.

[1] Rollo, pp. 46-65. Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Perlita J. Tria Tirona and Jose C. Reyes, Jr. concurring.

[2] Id. at 66-67. Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Regalado E. Maambong and Jose C. Reyes, Jr. concurring.

[3] CA rollo (CA-G.R. SP No. 76484), pp. 48-64.

[4] Id. at 27.

[5] Id. at 26.

[6] Id. at 44-47.

[7] SECTION 301. Building Permits

No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done.

[8] Promulgated on February 19, 1977.

[9] Sec. 27. Action Against Professional Squatters and Squatting Syndicates.--The local government units, in cooperation with the Philippine National Police, the Presidential Commission for the Urban Poor (PCUP), and the PCUP-accredited urban poor organization in the area, shall adopt measures to identify and effectively curtail the nefarious and illegal activities of professional squatters and squatting syndicates, as herein defined.

Any person or group identified as such shall be summarily evicted and their dwellings or structures demolished,

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and shall be disqualified to avail of the benefits of the Program. A public official who tolerates or abets the commission of the abovementioned acts shall be dealt with in accordance with existing laws.

For purposes of this Act, professional squatters or members of squatting syndicates shall be imposed the penalty of six (6) years imprisonment or a fine of not less than Sixty thousand pesos (P60,000) but not more than One hundred thousand pesos (P100,000), or both, at the discretion of the court.

[10] AN ACT TO PROVIDE FOR A COMPREHENSIVE AND CONTINUING URBAN DEVELOPMENT AND HOUSING PROGRAM, ESTABLISH THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES, approved on March 24, 1992.

[11] Rollo, p. 59; CA rollo (CA-G.R. SP No. 76484), p. 71.

[12] Department of Agrarian Reform v. Philippine Communications Satellite Corp., G.R. No. 152640, June 15, 2006, 490 SCRA 729.

[13] Section 215. Abatement of Dangerous Buildings

When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the degree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines.

[14] CA rollo (CA-G.R. SP No. 76484), pp. 62-63.

[15] Sec. 28. Eviction and Demolition.--Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

(a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;

(b) When government infrastructure projects with available funding are about to be implemented; or

(c) When there is a court order for eviction and demolition.

In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:

(1) Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;

(2) Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;

(3) Presence of local government officials or their representatives during eviction or demolition;

(4) Proper identification of all persons taking part in the demolition;

(5) Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;

(6) No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;

(7) Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and

(8) Adequate relocation, whether temporary or permanent: Provided, however, That in cases of eviction and

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demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government unit concerned and the National Housing Authority with the assistance of other government agencies within forty-five (45) days from service of notice of final judgment by the court, after which period the said order shall be executed: Provided, further, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

The Department of the Interior and Local Government and the Housing and Urban Development Coordinating Council shall jointly promulgate the necessary rules and regulations to carry out the above provision.

[16] Records show that at the time the Office of the Ombudsman rendered its decision on March 5, 2002 ordering respondents' dismissal from the service, Mayor Ferrera had already served his term as mayor. The COMELEC records also show that unlike Barangay Chairman Alfredo Ruba, Mayor Ferrera was not re-elected since it was Dionisio Donato T. Garciano who won the 2001 mayoralty race. Thus, there was no grant of any backwages and other benefits in favor of Mayor Ferrera.

[17] Rollo, pp. 64-65.

[18] Id. at 21.

[19] CA rollo (CA-G.R. SP No. 76700), pp. 132-141.

[20] Tapiador v. Office of the Ombudsman, G.R. No. 129124, March 15, 2002, 379 SCRA 322, 329.

[21] Section 4, Article II.

[22] Section 103(a).

[23] Department of Agrarian Reform v. Philippine Communications Satellite Corp., supra at 731.

[24] Declaring the Area within a Radius of Three Kilometers Surrounding the Satellite Earth Station in Baras, Rizal, a Security Zone. Done on April 30, 1982.

[25] Revising Presidential Decree No. 1845, Declaring the Surrounding Area of the Satellite Earth Station in Baras, Rizal Province, a Security Zone. Done on July 29, 1982.

[26] Department of Agrarian Reform v. Philippine Communications Satellite Corp., supra at 735-736.

[27] Id. at 736.

[28] CA rollo (CA-G.R. SP No. 76700), pp. 104-107.

[29] Sec. 27. Action Against Professional Squatters and Squatting Syndicates. -- The local government units, in cooperation with the Philippine National Police, the Presidential Commission for the Urban Poor (PCUP), and the PCUP-accredited urban poor organization in the area, shall adopt measures to identify and effectively curtail the nefarious and illegal activities of professional squatters and squatting syndicates, as herein defined.

Any person or group identified as such shall be summarily evicted and their dwellings or structures demolished, and shall be disqualified to avail of the benefits of the Program. A public official who tolerates or abets the commission of the abovementioned acts shall be dealt with in accordance with existing laws.

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[30] Sec. 28. Eviction and Demolition. -- Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

(a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;

(b) When government infrastructure projects with available funding are about to be implemented; or

(c) When there is a court order for eviction and demolition.

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[31] Section 214. Dangerous and Ruinous Buildings or Structures. -- Dangerous buildings are those which are herein declared as such or are structurally unsafe or not provided with safe egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health or public welfare because of inadequate maintenance, dilapidation, obsolescence, or abandonment; or which otherwise contribute to the pollution of the site or the community to an intolerable degree.

Section 215. Abatement of Dangerous Buildings. -- When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the degree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines.

[32] Estarija v. Ranada, G.R. No. 159314, June 26, 2006, 492 SCRA 652, 663; Bureau of Internal Revenue v. Organo, G.R. No. 149549, February 26, 2004, 424 SCRA 9, 16.

[33] CA rollo, (CA-G.R. SP No. 76700), pp. 108-110.

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