

CITY GOVERNMENT OF TUGUEGARAO, REPRESENTED BY ROBERT P. GUZMAN, PETITIONER, VS. RANDOLPH S. TING, RESPONDENT.*G.R. Nos. 192435-36. September 14, 2011*

Ponente: VILLARAMA, JR., J.

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Before us is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, which seeks to reverse and set aside the Resolutions[1] dated May 26, 2009 and December 9, 2009 of the Sandiganbayan (First Division) in SB-09-CRM-0004 to 0005. The Sandiganbayan directed the Ombudsman to resolve respondent's motion for reinvestigation which was treated as a motion for reconsideration of the Ombudsman's resolution finding probable cause against the respondent. Subsequently, the Special Prosecutor filed a motion for withdrawal of informations which the Sandiganbayan granted.

On June 12, 2008, the Office of the Ombudsman issued a resolution[2] finding probable cause to charge respondent Randolph S. Ting, then Mayor of Tuguegarao City, with violation of Section 3(g)[3] of Republic Act (R.A.) No. 3019 (Anti-Graft and Corrupt Practices Act) in connection with the purchase of three (3) parcels of land in the year 2004 under two separate deeds of sale. The City Government intended to use the properties as a public cemetery as these are situated near the existing public cemetery and traverse Barangays Atulayan Sur and Penque.

In his complaint-affidavit,[4] petitioner Robert P. Guzman alleged that the purchase of the subject lots was anomalous because it was done despite the lack of a project study on the suitability of the properties for their intended purpose, an Environmental Compliance Certificate (ECC) from the Department of Environment and Natural Resources (DENR), and initial clearance from the Department of Health (DOH) as required by Presidential Decree (P.D.) No. 856 (Sanitation Code). Petitioner pointed out that the transaction was grossly disadvantageous to the city government considering that the area is flood-prone and the subject properties are situated along a waterway/floodway which are inundated during the rainy season. The purchased contiguous lots also adjoin a creek and a road where box culverts were constructed, and are lower than the elevation of the road. Petitioner further claimed that respondent entered into the sale transaction knowing fully well that the purchase price was way above the properties' fair market value, as reflected in the fair market value appraisal of Cuervo Appraisers, Inc. (Cuervo Report).

Respondent filed his counter-affidavit[5] asserting that the subject transaction was duly authorized by the Sangguniang Panlungsod of Tuguegarao City, its terms were above-board and did not violate any provision of R.A. No. 3019. He pointed out that when the lots were offered for sale at P700 per square meter to the City Government, the City Appraisal Committee conducted an evaluation of the proposed acquisition of properties for the Tuguegarao City public cemetery expansion project which was included in the 2001-2005 City Comprehensive Development Plan/Comprehensive Land Use Plan (CCDP/CLUP) adopted by the Sangguniang Panlungsod. Said committee, after a thorough study, recommended that the City Government negotiate for the price of P351.54 per square meter which it found as the just and reasonable market value of the offered properties

as the average amount in the deeds of sale and sworn statements of property owners. As for the clearances from DOH and DENR, respondent thought that these requirements shall be secured at the time the intended cemetery will be constructed. Respondent also explained that flooding occurs only when there is an unusually large volume of rainfall in the Cagayan Valley Region and for a short period. Moreover, the various resolutions passed by the City Development Council (CDC) already factored in such possibility when it required the backfilling of the acquired area. As to the price of P160 per square meter indicated in the Cuervo Report, this runs counter to the findings of the City Appraisal Committee also based on deeds of sale and sworn statements of lot owners.

As already mentioned, the Ombudsman approved the recommendation of Graft Investigation & Prosecution Officer I Albert S. Almojuela to indict the respondent for violation of Section 3(g) of R.A. No. 3019. It was noted that respondent failed to attach copies of the deeds of sale and sworn statements supposedly used as basis for the resolution of the City Appraisal Committee recommending the price per square meter of the properties for acquisition as their fair market value.[6] Consequently, on January 30, 2009, the corresponding informations[7] were filed in the Sandiganbayan.

Except for the names of the lot owners-sellers and specific properties subject of sale, the two (2) informations contain identical allegations, as follows:

That on or about May 05, 2004 or sometime prior or subsequent thereto, in the City of Tuguegarao, Cagayan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused Randy (Randolph) S. Ting, a public officer, being then the City Mayor of Tuguegarao, Province of Cagayan, while in the performance of his official functions, did then and there willfully, unlawfully and feloniously purchase/enter into a Contract of Sale of two (2) parcels of land with a total area of 24,816 square meters (Lot Nos. 5860 and 5861 of the Cadastral survey of Tuguegarao previously covered by TCT No. 36942, now TCT No. 144828 and TCT No. 36943 now TCT No. 144829, respectively), on behalf of the City Government of Tuguegarao from ANSELMO ALMAZAN, ANGELO ALMAZAN and ANSELMO ALMAZAN III, unsuitable for the intended purpose (public cemetery) as the said parcels of land are at least 1.6 meters lower than the elevation of the Cabalza-Santol Road located along a waterway, adjacent to a box culvert and are periodically inundated during rainy season and overpriced by one hundred ninety one pesos and fifty four centavos (191.54) per square meter, which is manifestly and grossly disadvantageous to the City Government of Tuguegarao to the damage and prejudice of the aforesaid City.

CONTRARY TO LAW.[8]

Prior to his arraignment,[9] respondent filed on March 3, 2009 a Motion For Reinvestigation[10] alleging that the Ombudsman committed serious irregularity when it failed to consider that in the acquisition of the subject properties for the public cemetery expansion project, the City Appraisal Committee met and deliberated on the proposed purchase, and eventually passed a resolution adopting the average amount of P351.54 per sq. m. Hence, the City Appraisal Committee should have been subpoenaed to produce those bunched deeds of sale and sworn statements (photocopies of which were attached to the motion) in its possession, which were used in the evaluation of the offered price for the subject lots, and for which the said body spent considerable time in determining the fair market value of the properties offered. Respondent stressed that the Sangguniang Panlungsod adopted the committee's findings and authorized the respondent to enter into a contract of sale with the property owners at such price. It was noted that the Ombudsman based its findings mainly on the Cuervo Report which contained errors and inaccuracies such as the acquisition cost by the property owners, ground elevation of fronting roads and zonal valuation figures.

Respondent further emphasized the fact that petitioner himself is engaged in the cemetery business being the President of Tuguegarao Memorial, Inc. located near the subject properties as well as the old and "overloaded" public cemetery. Copies of five (5) contracts to sell involving petitioner's burial lots were submitted by the

respondent indicating the much higher selling price of petitioner's burial lots compared with the fair market value of the acquired properties. Respondent claimed that petitioner knew such expansion and development of the public cemetery would bring serious competition for the sales of burial lots in petitioner's private cemetery. Finally, respondent called attention to his election as City Mayor of Tuguegarao for three consecutive terms, and the various government awards he received as community leader and for the City Government, that would attest to his integrity and honesty in governance.

The Special Prosecutor, on behalf of the People of the Philippines, filed its Comment[11] stating that there is no necessity to conduct a reinvestigation but respondent's motion can instead be treated as a motion for reconsideration.

On May 26, 2009, the Sandiganbayan issued a resolution[12] ordering the prosecution to resolve respondent's motion for re-investigation which was treated as a motion for reconsideration.

By Resolution[13] dated September 8, 2009, the Ombudsman reversed her earlier ruling and found no probable cause to charge the respondent with violation of Section 3(g) of R.A. No. 3019. On the issues of overpricing and unsuitability of the purchased properties, the Ombudsman made the following findings:

Accused, however, was able to submit documents which served as basis for the amount arrived at by the City Appraisal Committee. In his Motion for Reinvestigation, accused submitted deeds of sale and tax declarations over properties in Barangay Atulayan Sur showing that some lots were sold for as much as P520 per sq. m. in the years 2002 to 2003. Accused also submitted another set of deeds of sale and tax declarations showing that in Barangay Penque, the average selling price of lots is P647.80 for the years 2002 to 2004. It would appear, therefore, that the City Appraisal Committee, relied on by [the] accused, had some basis in arriving at its recommendation.

The actions of the City Appraisal Committee, in the absence of any evidence of some illegality in its proceedings, should be accorded the presumption of regularity. Their official findings and recommendations, based as they are on actual data, should prevail over the findings of a private appraisal firm which was hired by [the] complainant. This private appraiser apparently used the so-called "Stripping Method" and the "Anticipated Development Approach" when it arrived at the price of P160.00 per sq. m. When it came, however, to the "Market Data Approach," the appraisal report stated that the buying and selling price of the lots within the vicinity was P800-P1000 per sq. m. - as gathered from local bank appraisers (Allied Bank and Chinabank). In the final analysis, it would appear that the City Appraisal Committee's recommendation is more realistic, being based on actual data and official records while that of the private appraiser - using the "Stripping Method" and "Anticipated Development Approach" - is more of a theory or an opinion.

Moreover, while the area did, at some time, experience some flooding, any doubts as to the propriety of putting up a cemetery thereon has been laid to rest by the findings of the Regional Offices of the Environmental Management Bureau and the Mines Geo Sciences Bureau of DENR. The Mines and Geosciences Bureau, Region 2 Office reported that the "proposed site can be developed as a cemetery or memorial park, provided, that proper mitigating measures like a well-designed drainage system and proper foundation designs shall be incorporated in the development plan of the project." The Environmental Management Bureau, for its part, stated that the project does not require an Environmental Compliance Certificate under PD 1586 but echoed the need to put up mitigating measures.

Other regulatory agencies of the government also gave approval to the project such as the Regional Office of the Center for Health of the DOH who gave INITIAL CLEARANCE to the project on January 30, 2008. The NWRB, in its letter dated July 21, 2008, stated that the "water table depth in the concerned area is within the permissible 4.5 meters below ground surface.[14]

The Ombudsman thus concluded that the existence of the element of a "contract or transaction being grossly and

manifestly disadvantageous to the government" had become doubtful since the buying price of the subject lots falls within the prevailing fair market value of the properties within the area. It was also noted that there was no evidence of a better offer received by the City Government of Tuguegarao in terms of price, size and location that also meets its requirements. Moreover, since the lots purchased have been shown to be suitable for use as a public cemetery by the DENR, it cannot be said that the transaction entered into by respondent is grossly and manifestly disadvantageous to the government.

On October 12, 2009, the Office of the Special Prosecutor moved for the withdrawal of the informations.[15]

Petitioner filed his Opposition[16] reiterating his arguments that the newly submitted evidence on the buying and selling price of lots in the area have no relevance while there is no comparison between lots in a fully developed memorial park and an undeveloped flood-prone land which forms part of a waterway. As to the DENR reports, petitioner pointed out that it was clearly indicated that the properties are located in a flood-prone area and require backfilling as certified by DENR officials. Also, the City Appraisal Committee certified only as to the fair market value of the properties without the backfilling cost. There was also non-compliance with public hearing requirement on re-zoning as affected residents in the vicinity have objected to the construction of a new public cemetery on the subject lots.

On December 9, 2009, the Sandiganbayan granted the prosecution's motion under the assailed resolution:

WHEREFORE, the instant Motion to Withdraw Informations is hereby GRANTED. The Informations against accused Randolph S. Ting are hereby ordered WITHDRAWN and the instant cases are hereby ordered DISMISSED.

SO ORDERED.[17]

Petitioner claims that he learned of the dismissal of the cases against the respondent during the campaign for the May 10, 2010 elections. Upon the request of his lawyer, petitioner was able to secure a certified copy of the above resolution from Executive Clerk IV Atty. Renato Bocar on June 3, 2010. Hence, he filed the present petition on June 18, 2010.

Petitioner argues that the Sandiganbayan departed from the accepted usual and prescribed course of judicial proceedings as to call for an exercise of the power of supervision when it:

- Acted upon the motion for reinvestigation by the accused and considered the same as a motion for reconsideration of the resolution of the ombudsman when the said resolution has already become final and the accused has been arraigned at the honorable Sandiganbayan and has pleaded not guilty.
- Dismissed prior to pre-trial the informations merely based on the Motion of the Ombudsman without a complete finding and/or discussion of all the issues raised in the pleadings in clear violation of Sec. 7 of P.D. 1486 creating the Sandiganbayan and totally ignoring the oppositions of the private complainant Guzman.
- Merely noted to appearance of the private complainant and totally ignored the pleadings filed by said private complainant Guzman.[18]

In his Comment,[19] respondent contends that petitioner raised the correctness of the finding of absence of probable cause, a question of fact which is not proper in a Rule 45 petition. Moreover, the petition is time-barred. Respondent points out that the Special Prosecutor did not file an appeal from the December 9, 2009 resolution of the Sandiganbayan within fifteen (15) days from receipt of a copy thereof; and necessarily so, because it was at their instance that the informations were withdrawn and pursuant thereto, the Sandiganbayan dismissed the criminal cases against the respondent. In any case, the petitioner cannot represent Tuguegarao City before the courts as he is not a proper party and neither does he have locus standi to bring a derivative suit in representation

of Tuguegarao City as a public corporation.

We deny the petition.

The crucial issue in this case concerns the petitioner's legal personality to challenge before this Court the dismissal by the Sandiganbayan of the criminal cases against the respondent.

It is settled that the Office of the Ombudsman has the sole power to investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. The power to withdraw the Information already filed is a mere adjunct or consequence of the Ombudsman's overall power to prosecute.[20]

However, while it is the Ombudsman who has the full discretion to determine whether or not a criminal case should be filed in the Sandiganbayan, once the case has been filed with said court, it is the Sandiganbayan, and no longer the Ombudsman, which has full control of the case so much so that the Information may not be dismissed without the approval of said court.[21] Further, it does not matter whether such filing of a motion to dismiss by the prosecution is done before or after the arraignment of the accused or that the motion was filed after a reinvestigation.[22]

In this case, the Sandiganbayan, ordered the Special Prosecutor to conduct a reinvestigation and subsequently granted his motion to withdraw the informations, after finding no probable cause against the latter on reinvestigation. The Sandiganbayan thus gave its approval to the withdrawal of the informations and ordered the dismissal of the cases. Since no appeal was taken by the Special Prosecutor from the order of dismissal within the reglementary period, the same had become final and executory pursuant to Section 7, paragraph 2[23] of P.D. No. 1606,[24] as amended by R.A. No. 8249[25].

But disregarding for the moment the question of timeliness, does petitioner have the legal personality to prosecute this appeal from the Sandiganbayan's dismissal of the criminal cases?

We hold that petitioner is not the proper party to file the present action. Section 4 (c) of P.D. No. 1606, as amended, clearly provides that "In all cases elevated to the Sandiganbayan and from the Sandiganbayan to the Supreme Court, the Office of the Ombudsman, through its special prosecutor, shall represent the People of the Philippines, except in cases filed pursuant to Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986."

A private complainant in a criminal case before the Sandiganbayan is allowed to appeal only the civil aspect of the criminal case after its dismissal by said court. While petitioner's name was included in the caption of the cases as private complainant during the preliminary investigation and re-investigation proceedings in the Office of the Ombudsman, he is not the offended party or private complainant in the main case. As evident from a reading of the informations, it is the City of Tuguegarao which suffered damage as a consequence of the subject purchase of lands by the respondent and hence is the private complainant in the main case.

As this Court declared in *People v. Velez*: [26]

On the first issue, the Court agrees with the contention of the respondent Office of the Ombudsman that Salmingo is not the proper party as petitioner in this case. The governing rule is Section 1, Rule 45 of the 1997 Rules of Civil Procedure, as amended, which reads:

SECTION 1. Filing of petition with Supreme Court. -- A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth.

The Court has previously held that the "party" referred to in the rule is the original party in the main case aggrieved by the order or decision in the main case. Hence, only the aggrieved original party in the main case is the only proper party as petitioner. One who has not been an original party in the main case has no personality to file a petition under said rule.

x x x x

The Court notes that Salmingo was not a party in the main case. While it is true that he initiated the criminal complaint with the Office of the Ombudsman against respondents for various offenses, however, under the Information filed with the SB, the parties are the People of the Philippines as plaintiff and the respondents as the accused. The private complainant is the City of Silay while Salmingo is merely a witness for the plaintiff.

The private complainant in a criminal case before the SB is also a proper party to file a petition under Rule 45 of the 1997 Rules of Civil Procedure, as amended, but only on the civil aspect of the case. It must be noted that Salmingo was not the private complainant in the main case. As gleaned from the Information, Silay City was the party which suffered damage as a consequence of the wrongful acts of the malefactors and hence is the private complainant in the main case.

Salmingo's inclusion in the caption of his petition of the People of the Philippines as a party petitioner is patently unauthorized. The Court believes that it is a futile attempt in compliance with Section 1, Rule 45 of the 1997 Rules of Civil Procedure, as amended.[27] (Emphasis supplied.)

In the light of the foregoing, the Court finds it unnecessary to discuss other matters raised in the petition.

WHEREFORE, the petition for review on certiorari is DENIED.

With costs against petitioner Robert P. Guzman.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Del Castillo, JJ., concur.

[1] Rollo, p. 392, 554-556. The Resolution dated December 9, 2009 was penned by Associate Justice Norberto Y. Geraldez with Associate Justices Rodolfo A. Ponferrada and Napoleon E. Inoturan concurring.

[2] Id. at 201-227.

[3] SEC. 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

x x x x

[4] Rollo, pp. 35-38.

[5] Id. at 64-70.

[6] Id. at 223.

[7] Id. at 229-231, 233-235.

[8] Id. at 229-230, 233-234.

[9] SB records (Vol. I), pp. 337-338.

[10] Id. at 151-167.

[11] Id. at 340-342.

[12] Supra note 1 at 392.

[13] SB records (Vol. I), pp. 401-409.

[14] Id. at 405-407.

[15] Id. at 398-400.

[16] Id. at 416-438.

[17] Rollo, p. 555.

[18] Id. at 10.

[19] Id. at 570-586.

[20] *Espinosa v. Office of the Ombudsman*, G.R. No. 135775, October 19, 2000, 343 SCRA 744, 751-752, citing Sec. 15(1), The Ombudsman Act of 1989 (R.A. No. 6770).

[21] *Nava v. National Bureau of Investigation, Regional Office No. XI, Davao City*, G.R. No. 134509, April 12, 2005, 455 SCRA 377, 394; *Espinosa v. Office of the Ombudsman*, id., citing *Dungog v. Court of Appeals*, Nos. L-77850-51, March 25, 1988, 159 SCRA 145, 148.

[22] See *Crespo v. Mogul*, No. L-53373, June 30, 1987, 151 SCRA 462, 471.

[23] SECTION 7. Form, Finality and Enforcement of Decisions. - x x x

A petition for reconsideration of any final order or decision may be filed within fifteen (15) days from promulgation or notice of the final order or judgment, and such motion for reconsideration shall be decided within thirty (30) days from submission thereon.

x x x x

[24] Entitled REVISING PRESIDENTIAL DECREE NO. 1486 CREATING A SPECIAL COURT TO BE KNOWN AS "SANDIGANBAYAN" AND FOR OTHER PURPOSES.

[25] Entitled AN ACT FURTHER DEFINING THE JURISDICTION OF THE SANDIGANBAYAN, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 1606, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[26] G.R. No. 138093, February 19, 2003, 397 SCRA 721.

[27] Id. at 731-732.

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