

THIRD DIVISION

[G.R. No. 214981, November 04, 2020]

**EULOGIO ALDE, PETITIONER, VS. CITY OF ZAMBOANGA, AS
REPRESENTED BY CITY MAYOR CELSO L. LOBREGAT,
RESPONDENT.**

D E C I S I O N

HERNANDO, J.:

This Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assails the February 27, 2014 Decision^[2] and the September 26, 2014 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 04147-MIN.

The Antecedents

Petitioner Eulogio Alde (Alde) filed a Miscellaneous Lease Application (MLA) No. 097332-10 covering two (2) lots with the Community Environment and Natural Resources Office (CENRO), Region IX, Zamboanga City, on February 9, 2001.^[4] With a combined area of Eight Hundred and Five (805) square meters, the two lots were covered by Transfer Certificates of Title (TCT) Nos. T-7301^[5] and T-7300,^[6] both in the name of the Republic. These lots were originally leased by the now defunct Bureau of Buildings and Real Property Management, Department of General Services to a certain Clarita Chan for a period of twenty (20) years, or until July 17, 1994. Subsequently, Executive Order (EO) No. 285, Series of 1987^[7] was issued transferring the control and possession of the lots to the Department of Environment and Natural Resources (DENR).^[8]

On May 14, 2002, the Office of the Regional Executive Director (RED) of the DENR-Region IX, Zamboanga City, ordered the appraisal of the subject lots covered by the MLA.^[9] On May 17, 2002, the Appraisal Committee reported that the lots are classified as commercial properties in the Zoning Ordinance under Department Order No. 145-95^[10] of the Department of Finance. The Appraisal Committee reported an appraised value of P6,800.00 per square meter or P6,475,000.00 for the entire 805 square meters.^[11] In addition, it determined the rental rate per annum at P174,250.00 representing three percent (3%) of the value of the land and one percent (1%) of the proposed improvements, in accordance with Section 37^[12] of Commonwealth Act (CA) No. 141 or "The Public Land Act".^[13]

Ruling of the RED-DENR Region IX:

On May 23, 2002, the RED of DENR-Region IX approved the abovementioned appraisal and granted the authority to lease the land in accordance with the Public Land Act.^[14]

Thereafter, the Chief of the Land Management Division issued a Notice of Lease for purposes of bidding the subject lots. The Notice of Lease over the subject lots was published by the National Printing Office in the *Official Gazette* as evidenced by a Certificate of Publication dated October 11, 2002;^[15] and in a newspaper called *Zamboanga Star*, which was posted at the *barangay* hall where the subject lots are located. Alde, the lone bidder, was declared as winner after submitting a bid of P174,250.00. As the winner, he paid ten percent (10%) of the bid price.^[16]

On July 4, 2002, the CENRO of the DENR referred to the Department of Public Works and Highways (DPWH) the matter of determining whether the subject lots are needed by the Government for public use.^[17] The Regional Director of the DPWH interposed no objection to the approval of the MLA.

In turn, on November 28, 2002, the Secretary of the DPWH endorsed Alde's MLA to the RED DENR-Region IX interposing no objection to Alde's MLA, provided "that 4.0 meters from the edge of the sidewalk be reserved for future widening/improvements of the National Government".^[18]

Thus, on July 2, 2003, the RED DENR-Region IX issued an Order of Award^[19] for the lease of the subject lots in favor of Alde. The respondent City Government of Zamboanga objected to the lease application of Alde over the subject lots. In two letters dated August 18, 2003 and September 10, 2003, the City Government of Zamboanga claimed that the awarded lots were needed for public use and that the posting and publication requirements of the notice of lease, were not complied with.^[20] The City Government of Zamboanga sent another letter of opposition to the DENR Secretary dated October 13, 2003.^[21]

On November 12, 2003, the City Government of Zamboanga eventually filed a verified Opposition^[22] with the DENR Regional Office IX which was docketed as DENR Case No. 8361. A Committee was then created to investigate the pending controversy by virtue of Regional Special Order No. 184 issued on September 3, 2004.^[23]

On March 1, 2005, the Committee submitted an Investigation Report to the RED DENR-Region IX, recommending the dismissal of the Opposition of the City Government and for the MLA of Alde to be given due course.^[24] The pertinent portions of that Investigation Report read:

The DPWH Regional Office interposed no objection on (sic) the application of Eulogio Alde, as to whether there is intention of (sic) of the Government to use the land for government purposes, and the Office of the Secretary DPWH, concurred with the opinion of the Regional Office.

Records would also show that before the Bidding, there [was] no objection/opposition filed on record by any Governmental Agency.

The Committee therefore believes and so holds that the land subject of the case is not intended for governmental purposes.

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The Committee after scrutiny and verification of the records believes and so holds the process under RA (Act) 3038 were (sic) properly observed, especially in the Notice and Publication of the Application.^[25]

Ruling of the DENR Secretary:

The City Government of Zamboanga appealed its case to the DENR Secretary. On May 27, 2007, the DENR Secretary issued a Decision^[26] in DENR Case No. 8361, denying the Opposition filed by the City Government of Zamboanga and giving due course to the Order of Award to Alde, viz.:

Records of the investigation reveal that the requirements relative to publication and posting have been complied with. Such findings, along with the presumption of regularity afforded to public officials in the performance of their official functions, cannot be overcome by general statements of the City denying compliance of said requirements and unsupported by any specific and concrete evidence. This Office also disagrees with the contention that specific notice should have been made to the City as no such requirement appears in the law.

As to the actual conduct of the bidding itself, the Minutes of the Bidding show compliance with the prescribed procedures of the law.

Anent the appraisal of the property, the Appraisal Committee (created pursuant to DAO 98-20) reported the value of the land and improvements at Six Million Four Hundred Seventy[-]Five Thousand Pesos (Php6,475,000.00) and One Million Pesos (Php1,000,000.00), respectively. Based on such valuations, the Committee then recommended that the minimum annual rental of the land be set at One Hundred Seventy[-]Four Thousand Two Hundred Fifty Pesos (Php174,250.00).

Sec. 64 (a), Chapter IX, Title III of the Public Land Act provides that the leases executed thereunder shall not be less than three (3) per centum of the appraised or reappraised value of the land plus one (1) per centum of the appraised or reappraised value of the improvements.

Upon computation, this Office holds the minimum rental rate submitted by the Committee and consequently, the bid made by Applicant and accepted by the same Committee, to be valid as within the required limitations provided for by law.^[27]

Subsequently, the City Government of Zamboanga filed a Motion for Reconsideration but it was denied by the DENR in an Order dated July 29, 2009, for being *pro forma*.^[28]

Thereafter, the City Government of Zamboanga filed an appeal with the Office of the President (OP).

Ruling of the Office of the President:

In its Decision^[29] in O.P. Case No. 09-1-423 dated June 18, 2010 and Resolution^[30] dated March 1, 2011 the OP affirmed the May 27, 2007 Decision and the July 29, 2009 Order of the DENR Secretary giving due course to the Order of Award to Alde.

The OP affirmed the ruling of the DENR that the commercial classification of the subject lots is based on EO No. 285 of 1987 and that the DENR's control and disposition over the subject properties are based also on Sections 3^[31] and 4^[32] of the Public Land Act.

Citing Sections 58,^[33] 59,^[34] and 61^[35] of the Public Land Act, the OP held that the subject lots do not fall under paragraphs (a), (b), or (c) of Section 59, but under paragraph (d), *i.e.*, "lands not included in any of the foregoing classes." Accordingly, the OP ratiocinated that:

[T]he subject lots may be disposed of by lease even without a prior declaration of non-necessity for public service considering that such is not a condition sine qua non before disposition of lands falling under paragraph (d) may be made. Clearly evident from Section 61 afore-cited is that, unlike lands classified under (a), (b) and (c) of Section 59 which needs a declaration that the land is not necessary for public service prior to disposition, no such requirement is provided for lands included in class (d), as subject lots herein.

Thus, and contrary to the [City of Zamboanga's] contention, a declaration that the disputed lots are not required for public service is not a prerequisite to the disposition of the same by lease.

Besides, it is worthy to note that the record of the case bears out the fact that the subject lots were and are not intended for public purposes. One, the lots were already the subject of a previous lease spanning twenty (20) years. Two, the DPWH interposed no objection to the lease application after determining that there is no intention of using the subject lots for a government purpose. And three, there is no showing that, prior to the bidding, any government agency or instrumentality, or any local government unit such as the appellant herein, filed an objection/opposition to the lease application.^[36]

With the dismissal of its appeal and denial of its Motion for Reconsideration by the OP in its March 1, 2011 Resolution,^[37] the City Government of Zamboanga filed a Petition for Review under Rule 43 of the Rules of Court with the CA.

The Ruling of the Court of Appeals:

In its Petition for Review filed with the CA, the respondent raised the following issues: 1) whether the disposition of public lands, such as through sale, lease, etc., under the Public Land Act, applies when the real property is already titled in the name of the Republic; and, 2) whether the Land Management Bureau (LMB)-DENR-Regional Office (RO)-IX has the power and jurisdiction to entertain and give due course to Alde's MLA considering that the two parcels of lands are already titled in the name of the Republic and covered by TCT No. T-7300 and TCT No. T-7301.^[38]

In its assailed Decision, the appellate court ruled in favor of respondent City of Zamboanga. It reversed and set aside the June 18, 2010 Decision of the OP. It also declared as null and void the Order of Award by the RED-DENR Region IX dated July 2, 2003 for having been issued in excess or lack of jurisdiction.^[39]

The appellate court ruled in this wise:

Initially, the authority to sell or lease land of private domain of the National Government was vested in the Office of the now defunct Secretary of Agriculture and Natural Resources pursuant to **Act No. 3038**.

Meanwhile, the creation of the General Services Administration vested the Building Services and Real Property Management Office the custody and administration of the properties owned by the National Government. However, upon the enactment of Executive Order 285 of 1987, these functions were transferred to the Department of Environment and Natural Resources, thus:

Section 3. Building Services and Real Property Management Office. The functions of the Building Services and Real Property Management Office are hereby transferred as follows:

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2. **To The Department of Environment and Natural Resources.**
 - a. Custody and administration of commercial, industrial and urban properties under the management of the abolished Building Services and Real Property Management Office;
 - b. Sale, lease, rental or transfer of these commercial, industrial and urban lands.

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Having been conferred with the aforementioned authority, the DENR clearly possesses jurisdiction to accept application for lease over the subject properties which was classified as commercial lands.

Question now arises, which law should DENR apply in order to dispose these kinds of lands, either by sale or lease?

Act 3038 provides that the lease of land of private domain of the Government, not otherwise agricultural, shall be in conformity of the Chapter IX with the Public Land Act. Section 2 of Act 3038 states in particular:

Section 2. **The sale or lease of the land** referred to in the preceding section **shall**, if such land is agricultural, **be made in the manner and** subject to the limitations prescribed in chapter five and six, respectively, of said Public Land Act, and **if it be classified differently in conformity with the provisions of chapter nine of said Act: Provided,**