

EN BANC

[G.R. No. 223228, April 10, 2019]

FELIX GOCHAN & SONS REALTY CORPORATION, PETITIONER, VS. COMMISSION ON AUDIT AND THE CITY GOVERNMENT OF CEBU, RESPONDENTS.

DECISION

REYES, J. JR., J.:

Before this Court is a Petition for *Certiorari* under Rule 64 of the Rules of Court which seeks to reverse and set aside the Resolutions dated April 6, 2015^[1] (Decision No. 2015-147) and December 23, 2015^[2] (COA CP Case No. 2007-008) of the Commission on Audit (COA) which annulled the Deed of Exchange between petitioner Felix Gochan & Sons Realty Corporation (Gochan & Sons) and public respondent City Government of Cebu (Cebu City).

Factual background

Gochan & Sons owned two parcels of land in Cebu City. One was located in Barangay Guadalupe, Cebu City and registered under Transfer Certificate of Title (TCT) No. 24712^[3] (Banawa Property). The Banawa Elementary School, however, occupied the Banawa Propeliy, since April 1970. Another property was located in Lorega, San Miguel, Cebu City and registered under TCT No. 7840 (Lorega Property). Pursuant to City Ordinance No. 1684 dated August 14, 1997 declaring the Lorega Property as a Socialized Housing Site, beneficiaries of the Socialized Housing Program of the local government had settled therein. On the other hand, Cebu City owned a parcel of land found in Salinas Drive, Lahug, Cebu City and registered under TCT No. T-30916 (Lahug Property)^[4]

On December 14, 2005, the *Sangguniang Panlungsod* of Cebu issued Resolution No. 05-1676^[5] approving the proposed land swap between Gochan & Sons and Cebu City and authorizing the city mayor to sign and execute a Deed of Exchange with Gochan & Sons. In the said trade, Gochan & Sons will give its Banawa and Lorega Properties to Cebu City in place of the latter's Lahug Property. The possible ejectment case Gochan & Sons may file against the Banawa Elementary School, to the prejudice of the school children and the city government itself, motivated the parties to agree to the land swap.

Consequently, a Deed of Exchange^[6] was made between the parties with Gochan & Sons' President Louise Y. Gochan and Cebu City Mayor Tomas R. Osmeña acting as their representatives. The COA Legal and Adjudication Office-Local Sector recommended the approval of the exchange after Gochan & Sons' properties were initially valued at P37,966,550.00 and Cebu City's Lahug Property only at P34,883,600.00.^[7]

Sometime in 2008, an inspection was made on the properties subject of the exchange in compliance with the directives from the COA. As a result of the inspection, a committee composed of COA assistant commissioners recommended a re-appraisal of the properties involved. After the re-appraisal, it was discovered that the value of Gochan & Sons' properties were about 45% lower compared to the Lahug Property.^[8]

Proceedings before the COA

In its Decision No. 2009-049 dated June 5, 2009,^[9] the COA held that it did not favor the approval of the Deed of Exchange. It opined that the exchange of properties would violate Republic Act (R.A.) No. 7279 because the property owned by Cebu City was more valuable than what Gochan & Sons had offered in exchange. The COA expounded that while it was aware of the objectives of City Ordinance No. 1684, it could not approve of the transaction because the difference of P20 Million is substantial, which Gochan & Sons should compensate if the transaction would be consummated.

Aggrieved, Gochan & Sons moved for reconsideration arguing that the rental losses should be considered in appraising its properties. It highlighted that for a period of 30 years its properties were used by Cebu City without paying rentals.^[10]

In its January 20, 2011 Resolution in Decision No. 2011-002,^[11] the COA denied Gochan & Sons' motion for reconsideration. It explained that while it may be true that Cebu City had occupied Gochan & Sons' properties since 1970, it does not necessarily follow that Cebu City is liable for rentals in the absence of any contract. The COA expounded that the fact that the Lorega Property was declared as a Socialized Housing Site would not make Cebu City liable to pay rentals because R.A. No. 7279 only provides for modes of land acquisition. Further, it noted that it was the Department of Education which mistakenly constructed the Banawa Elementary School on the Banawa Property because public schools were devolved to the local government units (LGUs) only upon the effectivity of the Local Government Code of 1991.

The COA added that if the Lahug property would be conveyed as payment for the alleged debts of Cebu City, then the transaction would no longer be a land swap but a *dacion en pago*. Lastly, it stressed that even if Cebu City's liability was valid, it will not be considered because it is a claim against the government subject to the COA's evaluation, which is distinct from the instant request for approval of the land swap.

Before receiving, but after the above-mentioned resolution was issued, Gochan & Sons filed its Supplemental Motion for Reconsideration^[12] (Supplemental MR) on January 28, 2011.

On June 27, 2011, the COA issued a Notice of Finality of Decision. Gochan & Sons filed a Letter-Request to Recall the Notice of Finality of Decision assailing that the Notice of Finality of Decision was premature because the COA did not pass upon the issues contained in its Supplemental MR. It again filed another Supplemental MR dated December 5, 2011 reminding the COA about the pending motions it had filed.^[13]

Meanwhile, on December 27, 2012, Cebu City enacted Budget Ordinance No. 2348 authorizing the sale of parcels of land, including the Lahug Property, for revenue generation. After public bidding, the Lahug Property was awarded to the lone bidder, Hotel of Asia, Inc. (HAI) upon payment of P83,673,500.00.^[14]

Thereafter, on June 7, 2012, the COA, during its Regional Meeting, resolved to admit Gochan & Sons' Supplemental MR. Thus, it instructed its Legal Services Sector to re-evaluate the case.^[15]

In its June 18, 2014 Resolution,^[16] the COA ruled in favor of Gochan & Sons and approved the Deed of Exchange it had entered into with Cebu City. It reiterated that under R.A. No. 7279, the value of lands involved in land swapping is determined based on land classification, market value reflected in the zonal valuation and assessed value taken from existing tax declarations. The COA remained consistent that debts or rental losses are not part of the cost to be capitalized in determining the market value of the land for exchange. It echoed that even if Cebu City's liability is valid and admitted, it will not be considered because it would then partake of a money claim against the government, which is distinct from the request for approval of the property swap. Likewise, the COA maintained that the more accurate and reliable valuation was that done by two private appraisers showing that Gochan & Sons' properties were about P20 Million less than Cebu City's Lahug Property.

Nevertheless, the COA recognized the predicament that the Cebu City and the affected communities face should the school and the Socialized Housing Site be relocated in the event that Gochan & Sons takes back its properties. It noted that the government would spend millions; there would be interruption in the delivery of quality education; and disruption of on-going urban land reforms if the Banawa Elementary School and the Socialized Housing Site be moved. Thus, the COA surmised that the P20,137,100.00 difference between the properties of Gochan & Sons and Cebu City is insubstantial when measured against the immeasurable value of distortion that may result in the denial of the Deed of Exchange.

Aggrieved, Cebu City moved for reconsideration.

Assailed COA Resolutions

In its April 6, 2015 Resolution,^[17] the COA granted Cebu City's motion for reconsideration. It explained that Gochan & Sons' Supplemental MR should have not been given due course because it was filed in the wrong office - it was filed before the office of a Commissioner and not the Commission Proper itself. The COA also noted that the Supplemental MR did not comply with the requirements for a supplemental pleading under Section 6, Rule 10 of the Rules of Court as it was filed without leave of court and it failed to set forth a supervening event that occurred since the date of the first motion for reconsideration. It highlighted that the Supplemental MR merely rehashed the issues already considered and passed upon in the June 5, 2009 Decision and the January 20, 2011 Resolution.

Moving to the substantive issues, the COA expounded that in all previous decision and resolutions of the COA involving the present controversy, it was consistently held that the supposed rental losses Gochan & Sons incurred should not be

considered in the valuation of the properties for the land swap absent any contract or agreement. It highlighted that the June 18, 2014 Resolution only reversed the June 5, 2009 Decision and the January 20, 2011 Resolution for fear of displacement of the Banawa Elementary School and the Socialized Housing Site. Nevertheless, the COA pointed out that the said conclusion failed to take into account that the state could acquire Gochan & Sons properties through expropriation. In addition, it noted that relocation and construction costs should not be considered in the value-for-value evaluation of the Deed of Exchange because they could not be ascertained in terms of determinable peso value.

The COA opined that the Deed of Exchange between Cebu City and Gochan & Sons was void *ab initio* because it was without its approval. Thus, it reasoned that Cebu City acted within its rights when it decided to dispose of the Lahug property through public bidding. The COA highlighted that HAI purchased the said property for P83,673,500.00, which was higher than the P44,783,000.00 fair market value previously determined, and that the purchase price more accurately reflects the property's actual market value. Thus, it disposed:

WHEREFORE, premises considered, this Commission **GRANTS** the instant Motion for Reconsideration. Accordingly, COA Decision No. 2014-113 dated June 18, 2014 is hereby **REVERSED AND SET ASIDE**.^[18]

Gochan & Sons moved for reconsideration but it was denied by the COA in its December 23, 2015 Resolution.^[19]

Hence, this present petition, raising the following:

Issues

I

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION OF THE PUBLIC RESPONDENT'S 2015 DECISION[;]

II

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN REJECTING THE DEED OF EXCHANGE OR LAND SWAPPING BETWEEN PETITIONER'S BANAWA AND LOREGA PROPERTIES AND [CEBU CITY'S] LAHUG PROPERTY[;]

III

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION IN RULING THAT CEBU [CITY] IS NOT LIABLE TO PETITIONER FOR RENTALS OR USAGE OF THE BANAWA AND

IV

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT HELD THAT THE 2014 [RESOLUTION] IMPROPERLY FACTORED IN THE COSTS IN RECONSTRUCTING THE SCHOOL BUILDINGS AND IN RELOCATING THE INFORMAL SETTLERS FROM THE HOUSING SITE AND THE PREJUDICE TO THE DELIVERY OF QUALITY EDUCATION IN APPROVING THE DEED OF EXCHANGE[;]

V

WHETHER OR NOT THE PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION WHEN IT DECLARED THAT A) THE DEED OF EXCHANGE IS NULL [AND] VOID [*AB INITIO*] AS IT FAILED TO OBTAIN THE APPROVAL OF THE COMMISSION[;] AND B) CEBU [CITY] ACTED WITHIN ITS RIGHTS IN SELLING ITS LAHUG PROPERTY THAT WAS [THE] SUBJECT MATTER OF THE DEED OF EXCHANGE[; AND]

[VI]

WHETHER OR NOT THE SALE OF THE LAHUG PROPERTY TO HAI REQUIRES APPROVAL OF COA.^[20]

Gochan & Sons argues that the COA committed grave abuse of discretion when it disregarded its motion for reconsideration of the April 6, 2015 Resolution for being a prohibited pleading and declaring that the said resolution to be final and immutable. It posits that the COA Rules of Procedure allows one motion for reconsideration per decision issued by the COA, and, as such, the motion for reconsideration assailing the April 6, 2015 Resolution should be treated separately because the prior decisions of the COA were in conflict with each other and the motions for reconsideration filed pertained to a particular decision of the COA.

In addition, Gochan & Sons laments that the COA erred in concluding that the Supplemental MR it filed did not bar the finality of the January 20, 2011 Resolution. It points out that the Cebu City never opposed to its filing and that the COA itself ordered a review of the said January 20, 2011 Resolution on the basis of the pending Supplemental MR. Gochan & Sons posits that the COA is now estopped from changing its admission of the Supplemental MR because it had already decided to accept it.

Further, Gochan & Sons theorizes that even assuming that the January 20, 2011 Resolution, which affirmed *in toto* the June 5, 2009 Decision, had attained finality, the tenor of the decision is that the COA is not inclined to approve the Deed of Exchange unless the parties consummate the same with Gochan & Sons' payment of the difference of the values of the properties. It highlights that it had acceded to