776 Phil. 336

THIRD DIVISION

[G.R. No. 188213, January 11, 2016]

NATIVIDAD C. CRUZ AND BENJAMIN DELA CRUZ, PETITIONERS, VS. PANDACAN HIKER'S CLUB, INC., REPRESENTED BY ITS PRESIDENT, PRISCILAILAO, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to annul and set aside the Court of Appeals Decision[1] dated March 31, 2008 in CA-G.R. SP. No. 104474. The appellate court reversed and set aside the earlier decision of the Office of the Ombudsman dismissing the complaint filed against petitioners.

Below are the facts of the case.

Petitioner Natividad C. Cruz (Cruz) was *Punong Barangay* or Chairperson of Barangay 848, Zone 92, City of Manila.[2] On November 10, 2006, around five o'clock in the afternoon, and along Central Street, Pandacan, Manila, within the vicinity of her barangay, she allegedly confronted persons playing basketball with the following statements:

> *Bakit nakabukas ang (basketball) court? Wala kayong karapatang maglaro sa court na 'to, barangay namin ito! xxx xxx xxx Wala kayong magagawa. Ako ang chairman dito. Mga walanghiya kayo, patay gutom! Hindi ako natatakot! Kaya kong panagutan lahat!*[3]

Then, she allegedly gave an order to the other petitioner, *Barangay Tanod* Benjamin dela Cruz (*Dela Cruz*), to destroy the basketball ring by cutting it up with a hacksaw which Dela Cruz promptly complied with, thus, rendering the said basketball court unusable.[4]

The acts of petitioners prompted the filing of a Complaint (for Malicious Mischief, Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service and Abuse o.f Authority)[5] before the Prosecutor's Office and the Office of the Ombudsman by the group that claims to be the basketball court's owners, herein respondents Pandacan Hiker's Club, Inc. (*PHC*) and its president Priscila Ilao (*Ilao*). In the complaint, they alleged that PHC, a non-stock, non-profit civic organization engaged in "health, infrastructure, sports and other so-called poverty alleviation activities" in the Pandacan area of Manila, is the group that had donated, administered and operated the subject basketball court for the Pandacan community until its alleged destruction by petitioners.[6]

The complaint averred that the damage caused by petitioners was in the amount of around P2,000.00. It was supported by the affidavits of ten (10) members of PHC who allegedly witnessed the destruction. Meanwhile, respondent Ilao added that the acts of petitioner Cruz, the Barangay Chairperson, of ordering the cutting up of the basketball ring and uttering abusive language were "unwarranted and unbecoming of a public official."[7]

In answer to the complaint, Cruz alleged that the basketball court affected the peace in the barangay and was the subject of many complaints from residents asking for its closure. She alleged that the playing court blocked jeepneys from passing through and was the site of rampant bettings and fights involving persons from within and outside the barangay. She claimed that innocent persons have been hurt and property had been damaged by such armed confrontations, which often involved the throwing of rocks and improvised "molotov" bombs. She also averred that noise from the games caused lack of sleep among some residents and that the place's frequent visitors used the community's fences as places to urinate. Cruz maintained that the court's users never heeded the barangay officials' efforts to pacify them and when the basketball ring was once padlocked, such was just removed at will while members of the complainants' club continued playing. When Cruz asked for the PHC to return the steel bar and padlock, the request was simply ignored, thus, prompting her to order Dela Cruz to destroy the basketball ring. The destruction was allegedly also a response to the ongoing clamor of residents to stop the basketball games.[8] Cruz denied allegations that she shouted invectives at the PHC members. In support of her answer, Cruz attached copies of the complaints, a "certification" and letters of barangay residents asking for a solution to the problems arising from the disruptive activities on the said playing venue.[9]

After the parties' submission of their respective Position Papers,[10] the Office of the Ombudsman rendered its Decision[11] dated April 26, 2007 dismissing the complaint filed by Ilao, *et al.* The Ombudsman found that the act of destroying the basketball ring was only motivated by Cruz and Dela Cruz performing their sworn duty, as defined in the Local Government Code.[12] It found the act to be a mere response to the clamor of constituents.[13] The office found that though the cutting of the ring was "drastic," it was done by the barangay officials within their lawful duties, as the act was only the result of the unauthorized removal of and failure to return the steel bar and padlock that were earlier placed thereon.[14] Neither did the office give credence to the allegation that Cruz uttered invectives against the complainants' witnesses, noting that the said witnesses are tainted by their personal animosity against the barangay officials.[15]

After the Ombudsman's ruling dismissing the complaint filed against Cruz and Dela Cruz, the complainants Ilao, *et al.* filed a petition for review before the Court of Appeals praying for the latter court to nullify the Ombudsman's decision.[16] The petition's thesis was that any actions in furtherance of the community's welfare must be approved by ordinance and that unless a thing is a nuisance *per se,* such a thing may not be abated via an ordinance and extrajudicially.[17]

Commenting on the petition for review, the Office of the Ombudsman, through the Office of the Solicitor General, averred that Section 389 of the Local Government

Code, which defines the powers, duties and functions of the *punong barangay,* among which are the power to enforce all laws and ordinances applicable within the barangay and the power to maintain public order in the barangay and, in pursuance thereof, to assist the city or municipal mayor and the *sanggunian* members in the performance of their duties and functions, does not require an ordinance for the said official to perform said functions.[18] The acts were also in pursuance of the promotion of the general welfare of the community, as mentioned in Section 16 of the Code.[19]

In its assailed Decision dated March 31, 2008, the Court of Appeals reversed and set aside the decision of the Office of the Ombudsman. The appellate court found petitioner Natividad C. Cruz liable for conduct prejudicial to the best interest of the service and penalized her with a suspension of six (6) months and one (1) day, while it reprimanded the other petitioner Benjamin dela Cruz, and also warned both officials that a future repetition of the same or similar acts will be dealt with more severely.

The appellate court sustained the contentions of Ilao, *et al.* that Cruz and Dela Cruz performed an abatement of what they thought was a public nuisance but did the same without following the proper legal procedure, thus making them liable for said acts.[20] It held Cruz to be without the power to declare a thing a nuisance unless it is a nuisance *per se.*[21] It declared the subject basketball ring as not such a nuisance and, thus, not subject to summary abatement. The court added that even if the same was to be considered a nuisance *per accidens,* the only way to establish it as such is after a hearing conducted for that purpose.[22]

A motion for reconsideration, filed by Cruz and Dela Cruz was likewise denied by the appellate court.[23] Hence, they filed this petition.

Petitioners maintain that they acted merely with the intention to regain free passage of people and vehicles over the street and restore the peace, health and sanitation of those affected by the basketball court. Cruz, in particular, asserts that she merely abated a public nuisance which she claimed was within her power as barangay chief executive to perform and was part of her duty to maintain peace and order.[24]

We deny the petition.

Under normal circumstances, this Court would not disturb the findings of fact of the Office of the Ombudsman when they are supported by substantial evidence.[25] However, We make an exception of the case at bar because the findings, of fact of the Ombudsman and the Court of Appeals widely differ.[26]

It is held that the administrative offense of conduct prejudicial to the interest of the service is committed when the questioned conduct tarnished the image and integrity of the officer's public office; the conduct need not be related or connected to the public officer's official functions for the said officer to be meted the corresponding penalty.[27] The basis for such liability is Republic Act No. 6713, or the Code of Conduct and Ethical Standards for Public Officials and Employees, particularly Section 4 (c) thereof, which ordains that public officials and employees shall at all times respect the rights of others, and shall refrain from doing acts contrary to

public safety and public interest.[28] In one case, this Court also stated that the Machiavellian principle that "the end justifies the means" has no place in government service, which thrives on the rule of law, consistency and stability.[29]

For these reasons, in the case at bar, We agree with the appellate court that the petitioners' actions, though well-intentioned, were improper and done in excess of what was required by the situation and fell short of the aforementioned standards of behavior for public officials.

It is clear from the records that petitioners indeed cut or sawed in half the subject basketball ring, which resulted in the destruction of the said equipment and rendered it completely unusable.[30] Petitioners also moved instantaneously and did not deliberate nor consult with the *Sangguniang Barangay* prior to committing the subject acts; neither did they involve any police or law enforcement agent in their actions. They acted while tempers were running high as petitioner Cruz, the Barangay Chairperson, became incensed at the removal of the steel bar and padlock that was earlier used to close access to the ring and at the inability or refusal of respondents' group to return the said steel bar and padlock to her as she had ordered.

The destructive acts of petitioners, however, find no legal sanction. This Court has ruled time and again that no public official is above the law.[31] The Court of Appeals correctly ruled that although petitioners claim to have merely performed an abatement of a public nuisance, the same was done summarily while failing to follow the proper procedure therefor and for which, petitioners must be held administratively liable.

Prevailing jurisprudence holds that unless a nuisance is a nuisance *per se*, it may not be summarily abated.[32]

There is a nuisance when there is "any act, omission, establishment, business, condition of property, or anything else which: (1) injures or endangers the health or safety of others; or (2) annoys or offends the senses; or (3) shocks, defies or disregards decency or morality; or (4) obstructs or interferes with the free passage of any public highway or street, or any body of water; or (5) hinders or impairs the use of property."[33] But other than the statutory definition, jurisprudence recognizes that the term "nuisance" is so comprehensive that it has been applied to almost all ways which have interfered with the rights of the citizens, either in person, property, the enjoyment of his property, or his comfort.[34]

A nuisance is classified in two ways: (1) according to the object it affects; or (2) according to its susceptibility to summary abatement.

As for a nuisance classified according to the object or objects that it affects, a nuisance may either be: (a) a public nuisance, *i.e.*, one which "affects a community or neighborhood or any considerable number of persons, although the extent of the annoyance, danger or damage upon individuals may be unequal"; or (b) a private nuisance, or one "that is not included in the foregoing definition" which, in jurisprudence, is one which "violates only private rights and produces damages to but one or a few persons."[35]

A nuisance may also be classified as to whether it is susceptible to a legal summary abatement, in which case, it may either be: (a) a nuisance *per se*, when it affects the immediate safety of persons and property, which may be summarily abated under the undefined law of necessity;[36] or, (b) a nuisance *per accidens*, which "depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing does in law constitute a nuisance;"[37] it may only be so proven in a hearing conducted for that purpose and may not be summarily abated without judicial intervention.[38]

In the case at bar, none of the tribunals below made a factual finding that the basketball ring was a nuisance *per se* that is susceptible to a summary abatement. And based on what appears in the records, it can be held, at most, as a mere nuisance *per accidens*, for it does not pose an ***immediate*** effect upon the safety of persons and property, the definition of a nuisance *per se.* Culling from examples cited in jurisprudence, it is unlike a mad dog on the loose, which may be killed "on sight because of the immediate danger it poses to the safety an.d lives of the people; nor is it like pornographic materials, contaminated meat and narcotic drugs which are inherently pernicious and which may be summarily destroyed; nor is it similar to a filthy restaurant which may be summarily padlocked in the interest of the public health.[39] A basketball ring, by itself, poses no immediate harm or danger to anyone but is merely an object of recreation. Neither is it, by its nature, injurious to rights of property, of health or of comfort of the community and, thus, it may not be abated as a nuisance without the benefit of a judicial hearing.[40]

But even if it is assumed, *ex gratia argumenti*, that the basketball ring was a nuisance *per se,* but without posing any immediate harm or threat that required instantaneous action, the destruction or abatement performed by petitioners failed to observe the proper procedure for such an action which puts the said act into legal question.

Under Article 700 of the Civil Code, the abatement, including one without judicial proceedings, of a public nuisance is the responsibility of the district health officer. Under Article 702 of the Code, the district health officer is also the official who shall determine whether or not abatement, without judicial proceedings, is the best remedy against & public nuisance. The two articles do not mention that the chief executive of the local government, like the Punong Barangay, is authorized as the official who can determine the propriety of a summary abatement.

Further, both petitioner Cruz, as Punong Barangay, and petitioner Dela Cruz, as Barangay Tanod, claim to have acted in their official capacities in the exercise of their powers under the general welfare clause of the Local Government Code. However, petitioners could cite no barangay nor city ordinance that would have justified their summary abatement through the exercise of police powers found in the said clause. No barangay nor city ordinance was violated; neither was there one which specifically declared the said basketball ring as a nuisance *per se* that may be summarily abated. Though it has been held that a nuisance *per se* may be abated via an ordinance, without judicial proceedings,[41] We add that, in the case at bar, petitioners were required to justify their abatement via such an ordinance because the power they claim to have exercised - the police power under the general welfare