

EN BANC

[G.R. No. 177807, October 11, 2011]

EMILIO GANCAYCO, PETITIONER, VS. CITY GOVERNMENT OF QUEZON CITY AND METRO MANILA DEVELOPMENT AUTHORITY, RESPONDENTS.

[G.R. NO. 177933]

METRO MANILA DEVELOPMENT AUTHORITY, PETITIONER, VS. JUSTICE EMILIO A. GANCAYCO (RETIRED), RESPONDENT,

D E C I S I O N

SERENO, J.:

Before us are consolidated Petitions for Review under Rule 45 of the Rules of Court assailing the Decision^[1] promulgated on 18 July 2006 and the Resolution^[2] dated 10 May 2007 of the Court of Appeals in CA-G.R. SP No. 84648.

The Facts

In the early 1950s, retired Justice Emilio A. Gancayco bought a parcel of land located at 746 Epifanio delos Santos Avenue (EDSA),^[3] Quezon City with an area of 375 square meters and covered by Transfer Certificate of Title (TCT) No. RT114558.

On 27 March 1956, the Quezon City Council issued Ordinance No. 2904, entitled "An Ordinance Requiring the Construction of Arcades, for Commercial Buildings to be Constructed in Zones Designated as Business Zones in the Zoning Plan of Quezon City, and Providing Penalties in Violation Thereof."^[4]

An arcade is defined as any portion of a building above the first floor projecting over the sidewalk beyond the first storey wall used as protection for pedestrians against rain or sun.^[5]

Ordinance No. 2904 required the relevant property owner to construct an arcade with a width of 4.50 meters and height of 5.00 meters along EDSA, from the north side of Santolan Road to one lot after Liberty Avenue, and from one lot before Central Boulevard to the Botocan transmission line.

At the outset, it bears emphasis that at the time Ordinance No. 2904 was passed by the city council, there was yet no building code passed by the national legislature. Thus, the regulation of the construction of buildings was left to the discretion of local government units. Under this particular ordinance, the city council required that the arcade is to be created by constructing the wall of the ground floor facing the sidewalk a few meters away from the property line. Thus, the building owner is not allowed to construct his wall up to the edge of the property line, thereby creating a

space or shelter under the first floor. In effect, property owners relinquish the use of the space for use as an arcade for pedestrians, instead of using it for their own purposes.

The ordinance was amended several times. On 8 August 1960, properties located at the Quezon City-San Juan boundary were exempted by Ordinance No. 60-4477 from the construction of arcades. This ordinance was further amended by Ordinance No. 60-4513, extending the exemption to commercial buildings from Balete Street to Seattle Street. Ordinance No. 6603 dated 1 March 1966 meanwhile reduced the width of the arcades to three meters for buildings along V. Luna Road, Central District, Quezon City.

The ordinance covered the property of Justice Gancayco. Subsequently, sometime in 1965, Justice Gancayco sought the exemption of a two-storey building being constructed on his property from the application of Ordinance No. 2904 that he be exempted from constructing an arcade on his property.

On 2 February 1966, the City Council acted favorably on Justice Gancayco's request and issued Resolution No. 7161, S-66, "subject to the condition that upon notice by the City Engineer, the owner shall, within reasonable time, demolish the enclosure of said arcade at his own expense when public interest so demands."^[6]

Decades after, in March 2003, the Metropolitan Manila Development Authority (MMDA) conducted operations to clear obstructions along the sidewalk of EDSA in Quezon City pursuant to Metro Manila Council's (MMC) Resolution No. 02-28, Series of 2002.^[7] The resolution authorized the MMDA and local government units to "clear the sidewalks, streets, avenues, alleys, bridges, parks and other public places in Metro Manila of all illegal structures and obstructions."^[8]

On 28 April 2003, the MMDA sent a notice of demolition to Justice Gancayco alleging that a portion of his building violated the National Building Code of the Philippines (Building Code)^[9] in relation to Ordinance No. 2904. The MMDA gave Justice Gancayco fifteen (15) days to clear the portion of the building that was supposed to be an arcade along EDSA.^[10]

Justice Gancayco did not comply with the notice. Soon after the lapse of the fifteen (15) days, the MMDA proceeded to demolish the party wall, or what was referred to as the "wing walls," of the ground floor structure. The records of the present case are not entirely clear on the extent of the demolition; nevertheless, the fact of demolition was not disputed. At the time of the demolition, the affected portion of the building was being used as a restaurant.

On 29 May 2003, Justice Gancayco filed a Petition^[11] with prayer for a temporary restraining order and/or writ of preliminary injunction before the Regional Trial Court (RTC) of Quezon City, docketed as Civil Case No. Q03-49693, seeking to prohibit the MMDA and the City Government of Quezon City from demolishing his property. In his Petition,^[12] he alleged that the ordinance authorized the taking of private property without due process of law and just compensation, because the construction of an arcade will require 67.5 square meters from the 375 square meter property. In addition, he claimed that the ordinance was selective and

discriminatory in its scope and application when it allowed the owners of the buildings located in the Quezon City-San Juan boundary to Cubao Rotonda, and Balete to Seattle Streets to construct arcades at their option. He thus sought the declaration of nullity of Ordinance No. 2904 and the payment of damages. Alternately, he prayed for the payment of just compensation should the court hold the ordinance valid.

The City Government of Quezon City claimed that the ordinance was a valid exercise of police power, regulating the use of property in a business zone. In addition, it pointed out that Justice Gancayco was already barred by estoppel, laches and prescription.

Similarly, the MMDA alleged that Justice Gancayco could not seek the nullification of an ordinance that he had already violated, and that the ordinance enjoyed the presumption of constitutionality. It further stated that the questioned property was a public nuisance impeding the safe passage of pedestrians. Finally, the MMDA claimed that it was merely implementing the legal easement established by Ordinance No. 2904.^[13]

The RTC rendered its Decision on 30 September 2003 in favor of Justice Gancayco.^[14] It held that the questioned ordinance was unconstitutional, ruling that it allowed the taking of private property for public use without just compensation. The RTC said that because 67.5 square meters out of Justice Gancayco's 375 square meters of property were being taken without compensation for the public's benefit, the ordinance was confiscatory and oppressive. It likewise held that the ordinance violated owners' right to equal protection of laws. The dispositive portion thus states:

WHEREFORE, the petition is hereby granted and the Court hereby declares Quezon City Ordinance No. 2094,^[15] Series of 1956 to be unconstitutional, invalid and void *ab initio*. The respondents are hereby permanently enjoined from enforcing and implementing the said ordinance, and the respondent MMDA is hereby directed to immediately restore the portion of the party wall or wing wall of the building of the petitioner it destroyed to its original condition.

IT IS SO ORDERED.

The MMDA thereafter appealed from the Decision of the trial court. On 18 July 2006, the Court of Appeals (CA) partly granted the appeal.^[16] The CA upheld the validity of Ordinance No. 2904 and lifted the injunction against the enforcement and implementation of the ordinance. In so doing, it held that the ordinance was a valid exercise of the right of the local government unit to promote the general welfare of its constituents pursuant to its police powers. The CA also ruled that the ordinance established a valid classification of property owners with regard to the construction of arcades in their respective properties depending on the location. The CA further stated that there was no taking of private property, since the owner still enjoyed the beneficial ownership of the property, *to wit*:

Even with the requirement of the construction of arcaded sidewalks within his commercial lot, appellee still retains the beneficial ownership of the said property. Thus, there is no "taking" for public use which must be subject to just compensation. While the arcaded sidewalks contribute to the public good, for providing safety and comfort to passersby, the ultimate benefit from the same still redounds to appellee, his commercial establishment being at the forefront of a busy thoroughfare like EDSA. The arcaded sidewalks, by their nature, assure clients of the commercial establishments thereat some kind of protection from accidents and other hazards. Without doubt, this sense of protection can be a boon to the business activity therein engaged. ^[17]

Nevertheless, the CA held that the MMDA went beyond its powers when it demolished the subject property. It further found that Resolution No. 02-28 only refers to sidewalks, streets, avenues, alleys, bridges, parks and other public places in Metro Manila, thus excluding Justice Gancayco's private property. Lastly, the CA stated that the MMDA is not clothed with the authority to declare, prevent or abate nuisances. Thus, the dispositive portion stated:

WHEREFORE, the appeals are **PARTLY GRANTED**. The *Decision* dated September 30, 2003 of the Regional Trial Court, Branch 224, Quezon City, is **MODIFIED**, as follows:

- 1) The validity and constitutionality of Ordinance No. 2094,^[18] Series of 1956, issued by the City Council of Quezon City, is **UPHELD**; and
- 2) The injunction against the enforcement and implementation of the said Ordinance is **LIFTED**.

SO ORDERED.

This ruling prompted the MMDA and Justice Gancayco to file their respective Motions for Partial Reconsideration.^[19]

On 10 May 2007, the CA denied the motions stating that the parties did not present new issues nor offer grounds that would merit the reconsideration of the Court.^[20]

Dissatisfied with the ruling of the CA, Justice Gancayco and the MMDA filed their respective Petitions for Review before this Court. The issues raised by the parties are summarized as follows:

- I. WHETHER OR NOT JUSTICE GANCAYCO WAS ESTOPPED FROM ASSAILING THE VALIDITY OF ORDINANCE NO. 2904.
- II. WHETHER OR NOT ORDINANCE NO. 2904 IS CONSTITUTIONAL.
- III. WHETHER OR NOT THE WING WALL OF JUSTICE GANCAYCO'S BUILDING IS A PUBLIC NUISANCE.

IV. WHETHER OR NOT THE MMDA LEGALLY DEMOLISHED THE PROPERTY OF JUSTICE GANCAYCO.

The Court's Ruling

Estoppel

The MMDA and the City Government of Quezon City both claim that Justice Gancayco was estopped from challenging the ordinance, because, in 1965, he asked for an exemption from the application of the ordinance. According to them, Justice Gancayco thereby recognized the power of the city government to regulate the construction of buildings.

To recall, Justice Gancayco questioned the constitutionality of the ordinance on two grounds: (1) whether the ordinance "takes" private property without due process of law and just compensation; and (2) whether the ordinance violates the equal protection of rights because it allowed exemptions from its application.

On the first ground, we find that Justice Gancayco may still question the constitutionality of the ordinance to determine whether or not the ordinance constitutes a "taking" of private property without due process of law and just compensation. It was only in 2003 when he was allegedly deprived of his property when the MMDA demolished a portion of the building. Because he was granted an exemption in 1966, there was no "taking" yet to speak of.

Moreover, in *Acebedo Optical Company, Inc. v. Court of Appeals*,^[21] we held:

It is therefore decisively clear that estoppel cannot apply in this case. The fact that petitioner acquiesced in the special conditions imposed by the City Mayor in subject business permit does not preclude it from challenging the said imposition, which is *ultra vires* or beyond the ambit of authority of respondent City Mayor. ***Ultra vires acts or acts which are clearly beyond the scope of one's authority are null and void and cannot be given any effect. The doctrine of estoppel cannot operate to give effect to an act which is otherwise null and void or ultra vires.*** (Emphasis supplied.)

Recently, in *British American Tobacco v. Camacho*,^[22] we likewise held:

We find that petitioner was not guilty of estoppel. When it made the undertaking to comply with all issuances of the BIR, which at that time it considered as valid, petitioner did not commit any false misrepresentation or misleading act. Indeed, petitioner cannot be faulted for initially undertaking to comply with, and subjecting itself to the operation of Section 145(C), and only later on filing the subject case praying for the declaration of its unconstitutionality when the circumstances change and the law results in what it perceives to be