

## SECOND DIVISION

[ G.R. No. 169741, January 20, 2010 ]

**GREENHILLS EAST ASSOCIATION, INC., REPRESENTED BY ITS  
PRESIDENT JOSEFINA J. CASTILLO, PETITIONER, VS. E.  
GANZON, INC., REPRESENTED BY ITS PRESIDENT EULALIO  
GANZON, RESPONDENT.**

### DECISION

**ABAD, J.:**

This case is about a residential subdivision's resistance to the construction of a high-rise building beside it and a failure to promptly file a memorandum appeal with the Office of the President (OP), resulting in the dismissal of the case for failure to perfect the appeal.

#### The Facts and the Case

Petitioner Greenhills East Association, Inc. (GEA) is the homeowners association of Greenhills East Subdivision, a residential subdivision in *Barangay* Wack-Wack, Greenhills East, Mandaluyong City.

For a time now, respondent E. Ganzon, Inc. (EGI) has sought to develop a 4,109-square meter lot (the land site) at the corner of EDSA and Ortigas Avenue in *Barangay* Wack-Wack (the *Barangay*) with its owner, the San Buena Realty and Development Corp. EGI wanted to build on the property a 77-storey mixed-used building with an 8-storey basement for a total of 85 storeys (the project). The proposed SKYCITY Condominium, when built, will be the tallest building in the country.

Petitioner GEA's subdivision has been classified under Section 4, Article IV of the Metropolitan Manila Commission Ordinance 81-01 (MMZO 81-01) as an "R-1 low density residential zone." The subdivision consists of about 380 lots. It has a church (the Santuario de San Jose), a school (the La Salle Greenhills), and a private road network.

As it happened, the land site on which the project will rise is adjacent to Greenhills East Subdivision although MMZO 81-01 had classified that site as "C-2" or a Major Commercial Zone. It is bounded by EDSA on the east, Florida Street on the north, Lot 11, Block 4 of the Subdivision and a narrow creek on the west, and Ortigas Avenue on the south.

Sometime in April or May 1997, respondent EGI fenced its land site, demolished the structures on it, and began excavation works without first getting a clearance from the *Barangay*. On July 10, 1997 the Housing and Land Use Regulatory Board (HLURB) issued to EGI a Certificate of Locational Viability and on August 11, 1997

the City of Mandaluyong issued to it an Excavation and Ground Preparation Permit. On September 15, 1997 the HLURB further issued to EGI a Preliminary Approval and Locational Clearance for its project.

In January 1998 petitioner GEA wrote the HLURB National Capital Region, Regional Director, opposing respondent EGI's project. Not content with its HLURB opposition, GEA filed a separate one addressed to the Department of Public Works and Highways (DPWH). On June 4, 1998 the DPWH advised the Building Official of Mandaluyong to require EGI to secure a Development Permit and a valid Locational Clearance for its project from the HLURB. In a separate development, EGI applied with the *Barangay* for clearance covering its project. On July 15, 1998, however, the *Barangay* denied the application.

On November 24, 1999 the HLURB Arbiter rendered a decision, dismissing petitioner GEA's opposition to respondent EGI's project. On March 20, 2001 acting on GEA's petition for review of the Arbiter's decision, the HLURB Board of Commissioners issued a resolution, denying the petition. It also denied GEA's motion for reconsideration on October 30, 2001.

On November 20, 2001 petitioner GEA filed its Notice of Appeal with the OP, simultaneously paying the required appeal and legal fees. On December 12, 2001 GEA received a copy of the OP's order dated November 27, 2001, requiring GEA to file its memorandum on appeal within 15 days from notice. But before the period was up or on December 27, 2001, GEA filed a motion for extension of 15 days within which to submit its memorandum on appeal. On January 11, 2002 GEA filed another motion for extension, this time for five days or until January 16, 2002, within which to file the required memorandum.

Petitioner GEA filed the required Memorandum on Appeal with the OP on January 16, 2002 but asked that office for an extension of two days within which to file the required draft decision. On January 18, 2002 GEA filed still another motion for extension, this time for one day, within which to file the required draft. GEA claims that it intended to file the same on January 21, 2002 but, due to a nationwide brownout on that day, it had to ask for five more days within which to do so. Finally, GEA filed its draft decision with the OP on January 28, 2002.

On February 10, 2003 petitioner GEA received a copy of an order from the OP dated January 28, 2003, denying its appeal on the ground of GEA's failure to perfect it on time. GEA moved for a reconsideration of the Order, but the OP denied the same.

On August 13, 2003 petitioner GEA filed with the Court of Appeals (CA) a petition for review of the OP's orders. On December 21, 2004, the CA rendered judgment, denying GEA's petition. GEA filed a motion for reconsideration but this, too, was denied, hence, the present recourse to this Court.

### **The Issues Presented**

Petitioner GEA basically presents the following issues for resolution:

1. Whether or not the CA correctly upheld the ruling of the OP that petitioner GEA failed to perfect on time its appeal to that office from the

decision of the HLURB; and

2. Whatever be the answer, if the substantial matter need to be addressed, whether or not the HLURB erred in finding no valid ground to restrict respondent EGI's use of the subject land site, which lies beside a residential subdivision, for constructing a high-rise building.

### **The Rulings of the Court**

**One.** Petitioner GEA contends that it had already perfected its appeal when it filed on November 20, 2001 a notice of appeal with the OP from the decision of the HLURB.

The Rules and Regulations Governing Appeals to the Office of the President of the Philippines<sup>[1]</sup> requires the appellant to file, not only a notice of appeal, but also a memorandum on appeal that must, among other things, state the grounds relied on for the appeal, the issues involved, and the reliefs sought.<sup>[2]</sup> The appellant must, to perfect his appeal, comply with these requirements within 15 days from receipt of a copy of the HLURB decision. Petitioner GEA, however, failed to submit an appeal memorandum.

Still, the OP actually gave petitioner GEA a chance to comply with the omitted requirement by directing it in the Order of November 27, 2001 to submit its appeal memorandum and draft decision within 15 days from notice; otherwise, it would dismiss the case. Since GEA received the above order on December 12, 2001, it had until December 27, 2001 within which to comply with it.

Petitioner GEA points out that it filed two successive motions for extension of time within which to file the required memorandum appeal and draft decision. Since GEA had already filed its memorandum appeal before the OP could deny those motions, it cannot be said that GEA filed the memorandum appeal out of time.

But petitioner GEA gambled when it did not file the memorandum appeal and draft decision within the extra 15 days that the OP gave it. It asked first for an extension of 15 days and then an additional extension of five days. GEA had no right to assume, however, that the OP would grant these extensions. The governing rules did not provide for them. Consequently, GEA has only itself to blame when its appeal was dismissed.<sup>[3]</sup>

Notably, the OP also required petitioner GEA to file, along with its memorandum appeal, a draft decision. GEA did not. It instead filed two more motions for extension of time within which to do so. Section 5 of the Rules of that office provides that failure to comply with its orders may warrant a dismissal of the appeal. Consequently, the OP acted within its authority in dismissing GEA's appeal for this additional reason.

**Two.** With the above ruling, this decision should end here. But petitioner GEA asks the Court to dispense with the technicalities involved and rule instead on the merits of the case, given that GEA and its members had gone through a lot of trouble to get the HLURB to stop the project from rising on the contested land site. To avert