

EN BANC

[G.R. No. 174567, March 12, 2009]

**SEVERINO B. VERGARA, PETITIONER, VS. THE HON.
OMBUDSMAN, SEVERINO J. LAJARA, AND VIRGINIA G. BARORO,
RESPONDENTS.**

DECISION

CARPIO, J.:

The Case

This petition for certiorari and mandamus^[1] assails the 17 March 2004 Resolution^[2] and 22 August 2005 Order^[3] of the Office of the Deputy Ombudsman for Luzon (Ombudsman) in OMB-L-C-02-1205-L. The Ombudsman dismissed the case filed by Severino B. Vergara (petitioner) and Edgardo H. Catindig against Severino J. Lajara as Calamba City Mayor (Mayor Lajara), Virginia G. Baroro (Baroro) as City Treasurer, Razul Requesto as President of Pamana, Inc. (Pamana), and Lauro Jocson as Vice President and Trust Officer of the Prudential Bank and Trust Company (Prudential Bank) for violation of Section 3(e) of the Anti Graft and Corrupt Practices Act (RA 3019).^[4]

The Facts

On 25 June 2001, the City Council of Calamba (City Council), where petitioner was a member, issued Resolution No. 115, Series of 2001. The resolution authorized Mayor Lajara to negotiate with landowners within the vicinity of Barangays Real, Halang, and Uno, for a new city hall site.^[5] During the public hearing on 3 October 2001, the choice for the new city hall site was limited to properties owned by Pamana and a lot in Barangay Saimsin, Calamba.^[6]

On 29 October 2001, the City Council passed Resolution No. 280, Series of 2001, authorizing Mayor Lajara to purchase several lots owned by Pamana with a total area of 55,190 square meters for the price of P129,017,600.^[7] Mayor Lajara was also authorized to execute, sign and deliver the required documents.^[8]

On 13 November 2001, the City Government of Calamba (Calamba City), through Mayor Lajara, entered into the following agreements:

1. Memorandum of Agreement (MOA)

The MOA with Pamana and Prudential Bank discussed the terms and conditions of the sale of 15 lots with a total area of 55,190 square meters. The total purchase price of P129,017,600 would be payable in installment as follows: P10,000,000 on or before 15 November 2001, P19,017,600 on or before 31 January 2002, and the balance of P100,000,000 in four equal installments

payable on or before 31 April 2002, 31 July 2002, 31 October 2002, and 31 January 2003.^[9]

2. Deed of Sale

Under the Deed of Sale, Calamba City purchased from Pamana and Prudential Bank 15 lots with a total area of 55,190 square meters, more or less, located in Brgy. Lecheria/Real, Calamba, Laguna with Transfer Certificate of Title (TCT) Numbers 159893, 159894, 159895, 159896, 159897, 158598, 162412, 162413, 204488, 66140, 61703, 66141, 66142, 66143, and 61705.

3. Deed of Real Estate Mortgage

Calamba City mortgaged to Pamana and Prudential Bank the same properties subject of the Deed of Sale as security for the balance of the purchase price.

4. Deed of Assignment of Internal Revenue Allotment (IRA)

Calamba City's IRAs from January 2002 to 31 January 2003 were assigned to Pamana and Prudential Bank in the amount of P119,017,600.

On 19 November 2001, the above documents were endorsed to the City Council. Petitioner alleged that all these documents were not ratified by the City Council, a fact duly noted in an Audit Observation Memorandum dated 9 August 2002 and issued by State Auditor Ruben C. Pagaspas of the Commission on Audit.

Petitioner stated that he called the attention of the City Council on the following observations:

- a) TCT Nos. 66141, 66142, 66143, 61705 and 66140 were registered under the name of Philippine Sugar Estates Development Company (PSEDC) and neither Pamana nor Prudential Bank owned these properties. Petitioner pointed out that although PSEDC had executed a Deed of Assignment^[10] in favor of Pamana to maintain the road lots within the PSEDC properties, PSEDC did not convey, sell or transfer these properties to Pamana. Moreover, petitioner claimed that the signature of Fr. Efren O. Rivera (Fr. Rivera) in Annex A of the Deed of Assignment appeared to be a forgery. Fr. Rivera had also submitted an Affidavit refuting his purported signature in Annex A.^[11]
- b) Petitioner claimed that there was no relocation survey prior to the execution of the Deed of Sale.^[12]
- c) Petitioner alleged that with respect to the two lots covered by TCT No. 61703 with an area of 5,976 square meters and TCT No. 66140 with an area of 3,747 square meters, Fr. Boyd R. Sulpico (Fr. Sulpico) of the Dominican Province of the Philippines had earlier offered the same for only P300 per square meter.^[13]
- d) Petitioner contended that TCT Nos. 66141, 66142, 66143 and 61705 are road lots. The dorsal sides of the TCTs bear the common annotation that the road lots cannot be closed or disposed without the prior approval of the National Housing Authority and the conformity of the duly organized homeowners' association.^[14]
- e) Petitioner claimed that an existing barangay road and an access road to Bacnotan Steel Corporation and Danlex Corporation were included in the Deed of Sale.^[15]

Petitioner maintained that since the pieces of evidence in support of the complaint

were documentary, respondents have admitted them impliedly.^[16]

The Ruling of the Ombudsman

On 17 March 2004, the Ombudsman issued a Resolution (Resolution) finding no probable cause to hold any of the respondents liable for violation of Section 3(e) of RA 3019.^[17]

The Ombudsman found that the subject properties have been transferred and are now registered in the name of Calamba City under new Certificates of Title.^[18] Moreover, the reasonableness of the purchase price for the subject lots could be deduced from the fact that Calamba City bought them at P3,800 per square meter, an amount lower than their zonal valuation at P6,000 per square meter. The Ombudsman added that it was common knowledge that the fair market value of the lots was higher than their zonal valuation, yet the lots were acquired at a lower price. The Ombudsman also found that the terms and conditions of payment were neither onerous nor burdensome to the city government as it was able to immediately take possession of the lots even if it had paid only less than ten percent of the contract price and was even relieved from paying interests on the installment payments. The Ombudsman ruled that there was no compelling evidence showing actual injury or damage to the city government to warrant the indictment of respondents for violation of Section 3(e) of RA 3019.^[19]

On 27 September 2004, petitioner filed a Motion for Reconsideration. Petitioner questioned the lack of ratification by the City Council of the contracts, the overpricing of lots covered by TCT Nos. 61703 and 66140 in the amount of P19,812,546, the inclusion of road lots and creek lots with a total value of P35,000,000, and the lack of a relocation survey.^[20]

In an Order dated 22 August 2005 (Order), the Ombudsman denied the Motion for Reconsideration for lack of merit.^[21] The Ombudsman held that the various actions performed by Mayor Lajara in connection with the purchase of the lots were all authorized by the Sangguniang Panlungsod as manifested in the numerous resolutions. With such authority, it could not be said that there was evident bad faith in purchasing the lands in question. The lack of ratification alone did not characterize the purchase of the properties as one that gave unwarranted benefits to Pamana or Prudential Bank or one that caused undue injury to Calamba City.^[22]

On the alleged overpricing of the lots covered by TCT Nos. 61703 and 66140, the Ombudsman ruled that it could be discerned from Fr. Sulpico's affidavit that the said parcels of land were excluded from the offer, being creek easement lots.^[23]

On the lots covered by TCT Nos. 66141, 66142, and 66143, the Ombudsman resolved that new titles were issued in the name of Pamana with PSEDC as the former registered owner.^[24]

The Ombudsman finally declared that the absence of a relocation survey did not affect the validity of the subject transactions.^[25]

Petitioner contended that the assailed Ombudsman's Resolution and Order discussed

only the alleged reasonableness of the price of the property. The Ombudsman did not consider the issue that Calamba City paid for lots that were either easement/creeks, road lots or access roads. Petitioner alleged that it is erroneous to conclude that the price was reasonable because Calamba City should not have paid for the creeks, road lots and access roads at the same price per square meter. Petitioner claimed that the additional evidence of overpricing was a letter from Fr. Sulpico who offered the road lots covered by TCT Nos. 61703 and 66140 at P300^[26] per square meter.^[27]

In their Comment, Mayor Lajara and Baroro (respondents) argued that as frequently ruled by this Court, it is not sound practice to depart from the policy of non-interference in the Ombudsman's exercise of discretion to determine whether to file an information against an accused. In the assailed Resolution and Order, the Ombudsman stated clearly and distinctly the facts and the law on which the case was based and as such, petitioner had the burden of proving that grave abuse of discretion attended the issuance of the Resolution and Order of the Ombudsman. Respondents maintained that in a meager three pages of argumentation, petitioner failed to point out the grave errors in the assailed Resolution and merely raised issues which have been disposed of by the Ombudsman.^[28]

Respondents claimed that out of the six PSEDC-owned lots that were sold to Calamba City, the ownership of the four lots had already been transferred to Pamana as evidenced by the new TCTs. Respondents added that even if TCT Nos. 66140 and 61703 were still in PSEDC's name, ownership of these lots had been transferred to Pamana as confirmed by Fr. Sulpico, the custodian of all the assets of the Dominican Province of the Philippines.^[29] Respondents also refuted the alleged overpricing of the lots covered by TCT Nos. 66140 and 61703. Respondents contended that Fr. Sulpico's letter offering the lots at P350^[30] per square meter had been superseded by his own denial of said offer during the meeting of the Sangguniang Panlungsod on 14 November 2002.^[31]

On the absence of ratification by the City Council of the MOA, Deed of Sale, Deed of Mortgage, and Deed of Assignment, respondents explained that Section 22^[32] of Republic Act No. 7160 (RA 7160) spoke of prior authority and not ratification. Respondents pointed out that petitioner did not deny the fact that Mayor Lajara was given prior authority to negotiate and sign the subject contracts. In fact, it was petitioner who made the motion to enact Resolution No. 280.^[33]

On the non-conduct of a relocation survey, respondents noted that while a relocation survey may be of use in determining which lands should be purchased, the absence of a relocation survey would not, in any manner, affect the validity of the subject transactions.^[34]

The Ombudsman, as represented by the Office of the Solicitor General, claimed that there was no grave abuse of discretion committed in dismissing the complaint-affidavit for violation of Section 3(e) of RA 3019.^[35] The Ombudsman reasoned that to warrant conviction under Section 3(e) of RA 3019, the following essential elements must concur: (a) the accused is a public officer discharging administrative, judicial, or official functions; (b) he must have acted with manifest partiality, evident bad faith, or inexcusable negligence; and (c) his action caused undue injury to any

party, including the government, or gave any private party unwarranted benefits, advantage, or preference in the discharge of his functions.^[36] The Ombudsman contended that when Mayor Lajara entered into and implemented the subject contracts, he complied with the resolutions issued by the City Council.

The Ombudsman cites the following circumstances to show that the action taken by Mayor Lajara neither caused any undue injury to Calamba City nor gave a private party any unwarranted benefits, advantage, or preference. First, the purchase price of P3,800 per square meter or a total of P129,017,600 for the site of the new City Hall was reasonable. The initial offer of the seller for the property was P6,000 per square meter, an amount equal to the zonal value. Second, Calamba City took immediate possession of the properties despite an initial payment of only P10,000,000 out of the total purchase price. Third, the total purchase price was paid under liberal terms as it was paid in installments for one year from date of purchase. Fourth, the parties agreed that the last installment of P25,000,000 was subject to the condition that titles to the properties were first transferred to Calamba City.^[37]

In its Memorandum, the Ombudsman asserted that petitioner had not substantiated his claim by clear and convincing evidence that TCT Nos. 66141, 66142, and 66143 are road lots. The sketch plan presented by petitioner could not be regarded as conclusive evidence to support his claim. The Ombudsman also refuted petitioner's claim that TCT Nos. 68601 and 68603 were included in the Deed of Sale.^[38]

The Ombudsman maintained that petitioner's contention that the prices for TCT Nos. 66140 and 61703 were jacked up was belied by the affidavit of Fr. Sulpico stating that the said lots were excluded from the offer as they were creek/easement lots.^[39]

The Ombudsman explained that ratification by the City Council was not a condition *sine qua non* for the local chief executive to enter into contracts on behalf of the city. The law requires prior authorization from the City Council and in this case, Resolution Nos. 115 and 280 were the City Council's stamp of approval and authority for Mayor Lajara to purchase the subject lots.^[40]

The Ombudsman added that mandamus is not meant to control or review the exercise of judgment or discretion. To compel the Ombudsman to pursue a criminal case against respondents is outside the ambit of the courts.^[41]

Aggrieved by the Ombudsman's Resolution and Order, petitioner elevated the case before this Court.

Hence, this petition.

The Issues

The issues in this petition are:

1. Whether the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction when the Ombudsman dismissed for lack of probable cause the case against respondents for violation of Section 3(e) of RA