

SECOND DIVISION

[G.R. No. 154992, February 13, 2008]

HARRY G. LIM Petitioner, vs. **ANIANO DESIERTO**, in his capacity as Ombudsman, **ANTONIO H. CERILLES, ROSELLER DELA PEÑA**, and the **COURT OF APPEALS**, Respondents.

D E C I S I O N

VELASCO JR., J.:

This is a Petition for Review on Certiorari under Rule 45 which seeks to set aside the August 27, 2002 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 69044 entitled *Harry G. Lim v. Aniano Desierto, in his capacity as Ombudsman, Antonio H. Cerilles and Roseller dela Peña*. The CA affirmed the August 23, 2001 Memorandum issued by Pelagio S. Apostol, OIC-Director, Evaluation and Preliminary Investigation Bureau of the Office of the Ombudsman, as approved by respondent then Ombudsman Aniano Desierto, and the October 30, 2001 Order denying petitioner Harry G. Lim's motion for reconsideration. In essence, the Memorandum and Order dismissed petitioner's complaints against respondents former Secretary Antonio H. Cerilles of the Department of Environment and Natural Resources (DENR) and Undersecretary Roseller dela Peña for violation of Republic Act No. (RA) 3029 and RA 6713 insofar as dela Peña is concerned.

The Facts

Petitioner's complaints against Cerilles and dela Peña can be traced back to the dispute over the foreshore area identified as Lot FLA-XI-5B-000002-D.

DENR Case No. 5231

On November 16, 1989, Roberto Cantoja filed an application for the lease of a foreshore area claiming that it adjoins his property. The DENR approved Cantoja's application and granted the corresponding Foreshore Lease Agreement known as FLA-XI-5B-000002-D.

On March 4, 1994, petitioner filed a protest to annul the FLA on the ground that Cantoja committed fraud and misrepresentation in claiming that the foreshore area adjoins Cantoja's property. Petitioner alleged that he owns the land in Makar, General Santos City, identified as Lot 2-B (LRC) Psd-210799, covered by Transfer Certificate of Title (TCT) No. 8423, which adjoins the foreshore area subject of the lease agreement. The protest was docketed as DENR Case No. 5231.

On February 1, 1996, the Regional Executive Director of DENR Region XI, Davao City issued an Order dismissing petitioner's protest. Petitioner then moved to reconsider said order which motion was treated as an appeal by the DENR-Quezon City.

On May 2, 2000, the Office of the DENR Secretary gave due course to petitioner's motion and ordered the cancellation of Cantoja's contract on the ground of misrepresentation. Cantoja moved to reconsider this decision.

Pending resolution of the motion for reconsideration in DENR Case No. 5231, the Office of the Solicitor General (OSG) filed Civil Case No. 6438 entitled *Republic of the Philippines v. Harry Lim, et. al.* before the General Santos City Regional Trial Court, Branch 23. This case involved petitioner's property covered by TCT No. 8423 which allegedly adjoins the foreshore area in dispute. Petitioner's counsel offered a compromise to the OSG to the effect that petitioner would surrender and transfer to the Republic of the Philippines more than 1,000 sq.m. of lot covered by TCT No. 8423, the portion actually occupied by the Makar River, provided that the Republic acknowledge the remaining portion of petitioner's property as alienable and not foreshore area. In view of the technical nature of the proposals, the OSG endorsed petitioner's offer of compromise to respondent Cerilles who was then the DENR Secretary. On August 16, 2000, Cerilles, via DENR Special Order No. 2000-820, ordered the formation of a team to conduct an investigation and ocular inspection of the subject lot.

On October 20, 2000, the DENR favorably resolved Cantoja's motion for reconsideration through the October 17, 2000 Order. In that Order, Cerilles set aside the May 2, 2000 Order and gave full force to the FLA on the postulate that petitioner's title to the lot is void since it covers foreshore area and is a part of the river bed. He further held that the issuance of the FLA to Cantoja could not be considered fraudulent because there was, when it was being processed, no objection made by petitioner. Cerilles noted that petitioner did not object when Cantoja introduced substantial improvements in the area, such as an office building, wharf, and other facilities. In fact, Lim protested the foreshore lease of Cantoja only in 1994 or four years after the lease was issued in 1990.

Petitioner moved to reconsider the October 17, 2000 Order of the DENR, contending that its finding that the land is a foreshore area and river bed has no basis in fact and in law; thus, he asked for a joint survey of the land. In his January 18, 2001 Order, Cerilles denied petitioner's motion on the ground that the order substantially met the minimum requirements of the law and contained a clear-cut recital of facts. He also ordered the Regional Executive Director, DENR-Region XI, Davao City, to coordinate with the Solicitor General towards the cancellation of petitioner's title to the property, TCT No. 8423.

OMB Case No. 0-01-0189

On March 1, 2001, petitioner filed a complaint-affidavit before the Office of the Ombudsman charging Cerilles and dela Peña with violation of RA 3029 and RA 6713 insofar as dela Peña is concerned. Petitioner alleged that Cerilles signed the October 17, 2000 Order even before the team he created to conduct an investigation and ocular inspection could submit its findings. Moreover, Cerilles allegedly issued a "midnight decision" as an outgoing cabinet official, releasing his January 18, 2001 Order only on February 9, 2001 when he was no longer the DENR secretary. Cerilles purportedly preempted the decision of the court in Civil Case No. 6438 for Rescission and Annulment of Title by reinstating the foreshore lease agreement with Cantoja. This allegedly violated Section 3(e) of RA 3019, the *Anti-Graft and Corrupt Practices Act*, which provides:

Sec. 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

As regards dela Peña, petitioner alleged that dela Peña recommended the legal services of Atty. Rogelio Garcia to handle the DENR case and other civil cases pending between petitioner and Cantoja. Petitioner said that he accepted Garcia as counsel to please dela Peña.^[2] Petitioner later discovered that Garcia was a law partner of dela Peña. This allegedly violated Sec. 4(b) and (d) of RA 6713, known as the *Code of Conduct and Ethical Standards for Public Officials and Employees*, as follows:

Section 4. *Norms of Conduct of Public Officials and Employees.*—(A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

x x x x

b) Professionalism. - Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

x x x x

(d) Political neutrality. - Public officials and employees shall provide service to everyone without unfair discrimination and regardless of party affiliation or preference.

Furthermore, petitioner alleged that during a hearing of Civil Case Nos. 5403 and 5351, Cantoja's counsel presented an undated advance copy of the October 17, 2000 Order purportedly signed by dela Peña. Petitioner's counsel, however, received his copy of the said order only in November 2000. According to petitioner, dela Peña's act of releasing a copy of the order in advance allegedly manifests partiality, in violation of the aforementioned Sec. 3(e) of RA 3019, and its Sec. 3(k), which states:

Sec. 3. Corrupt practices of public officers.—x x x

(k) Divulging valuable information of a confidential character, acquired by

his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

In his defense, Cerilles denied issuing a "midnight decision," alleging that all the normal and regular processes were observed in the issuance of the January 18, 2001 Order. It was, so he claimed, released on February 9, 2001 after it was reviewed by the then OIC-Secretary Jomarie Gerochi who gave the authority for its release. As regards the October 17, 2000 Order, Cerilles stated that the only remedy available to petitioner is appeal, which petitioner availed himself of before the Office of the President (OP). Dela Peña, on the other hand, denied having recommended the services of Garcia to petitioner. Garcia did not appear as petitioner's counsel before dela Peña. As for the alleged advance copy of the October 17, 2000 Order, dela Peña claimed that petitioner's delayed receipt of a copy of the order is attributable to the post office. Dela Peña denied giving a copy of the order in advance to Cantoja's lawyer. Lastly, dela Peña averred that the DENR sustained Cantoja's FLA following a verification on the foreshore nature of petitioner's land.^[3]

In the June 2, 2001 Resolution,^[4] Graft Investigation Officer I Myrna A. Corral recommended the filing of charges against Cerilles and dela Peña for violation of Sec. 3(e) of RA 3019. She recommended that dela Peña be further charged with violation of Sec. 3(k) of RA 3019 and Sec. 4(b) of RA 6713.

Upon review, Apostol, the OIC/Director of the Evaluation and Preliminary Investigation Bureau of the Office of the Ombudsman, recommended that Corral's resolution be disapproved, thus

I disagree with the findings of GIO on the ground of prematurity. The recognition of the Lease Agreement is a mere reversion to a previous status which does not affect the proceedings in court. Moreover, the issue of nullity of title can be determined only with finality in a cancellation proceeding to be filed by the OSG.^[5]

Robert E. Kallos, the Deputy Special Prosecutor and OIC of the Office of the Ombudsman-Preliminary Investigation, Administrative Adjudication and Monitoring Office, who also reviewed the June 2, 2001 Resolution, agreed with Apostol's recommendation. Accordingly, Apostol issued the August 23, 2001 Memorandum,^[6] recommending the dismissal of Corral's resolution for lack of probable cause, reasoning as follows:

This case is bound to fail. The perceived undue injury suffered by the complainant is not apparent. The reversion and cancellation of title is still to be initiated by the State thru the Solicitor General in an appropriate [proceeding]. Moreover, the questioned decision which principally includes the reinstatement of the Foreshore Lease Contract in favor of Roberto Cantoja despite false certification is not yet final as it was finally appealed by the complainant in an appeal to the Office of the President dated February 2, 2001. Furthermore, contrary to the allegation of the complainant, it is inconceivable that no inspection was ever made on the property. In fact, no other than the complainant himself alleged that a Civil Case was already filed by the Republic against him, together with Jacinto Acharon and Ernesto Go for annulment of title and rescission.