592 Phil. 348

THIRD DIVISION

[G.R. No. 150270, November 26, 2008]

CITY ENGINEER OF BAGUIO AND HON. MAURICIO DOMOGAN, PETITIONERS, VS. ROLANDO BANIQUED, RESPONDENTS.

D E C I S I O N

REYES, R.T., J.:

OFT-QUOTED in cases involving searches and seizures is the principle that a man's home is his castle. Not even the king would dare desecrate it. In protecting his home, the poorest and most humble citizen or subject may bid defiance to all the powers of the State.[1] Indeed, a man is king in his own house.

The case before Us views the sanctity of a man's home in a different light. It is about a man's struggle against the attempt of the State to demolish his house.

Petitioners Leo Bernardez, Jr. and Mauricio Domogan question by way of appeal under Rule 45 the Decision[2] and Resolution[3] of the Court of Appeals (CA) which set aside the Order[4] of the Regional Trial Court (RTC) dismissing the complaint[5] for prohibition with temporary restraining order (TRO)/injunction filed by private respondent Rolando Baniqued.

The Facts

Generoso Bonifacio, acting as the attorney-in-fact of Purificacion de Joya, Milagros Villar, Minerva Baluyut and Israel de Leon filed a complaint with the Office of the Mayor of Baguio City seeking the demolition of a house built on a parcel of land[6] located at Upper Quezon Hill, Baguio City.

On May 19, 1999, Domogan, the then city mayor of Baguio City, issued Notice of Demolition No. 55, Series of 1999, against spouses Rolando and Fidela Baniqued. Pertinent parts of the notice read:

> The investigation and ocular inspection conducted by the City Engineer's Office (memorandum dated 18 February 1998) showed that you built your structures sometime in 1999 without any building permit in violation of P.D. 1096 and possibly R.A. 7279, qualifying your structure structures illegal, thus, subject to demolition.
>
> The Anti-Squatting Committee in its Resolution No. 52-4 dated 22 April 1999 has recommended for the demolition of your illegal structures.
>
> IN VIEW OF THE FOREGOING, you are hereby notified to voluntarily remove/demolish your illegal structures within seven (7) days from

receipt of this notice, otherwise the City Demolition Team will undertake the demolition of your illegal structures at your own expense.[7]

Aggrieved, Rolando Baniqued filed a complaint for prohibition with TRO/injunction before Branch 60 of the RTC in Baguio City.

In his complaint, Baniqued alleged that the intended demolition of his house was done without due process of law and "was arrived at arbitrarily and in a martial-law like fashion." Specifically, Baniqued alleged that he was (1) never given any copy of the complaint of Generoso Bonifacio; (2) "never summoned nor subpoenaed to answer that complaint"; (3) "never allowed to participate in the investigation and ocular inspection which the City Engineer's Office allegedly conducted, as a consequence of the complaint of Bonifacio, much less to adduce evidence in support of his position"; (4) "never summoned nor subpoenaed to appear before the Anti-Squatting Committee"; and (5) "not given the opportunity to contest the complaint against him, before such complaint was decided and to be carried out by the Defendants."[8]

Baniqued buttressed his complaint by arguing that Article 536 of the Civil Code should be applied, i.e., there should be a court action and a court order first before his house can be demolished and before he can be ousted from the lot.[9] More, under Section 28 of Republic Act 7279, an adequate relocation should be provided first before demolition can be had.[10] Too, by virtue of the National Building Code or Presidential Decree (P.D.) No. 1096, the demolition of buildings or structures should only be resorted to in case they are dangerous or ruinous. Otherwise, the remedy is criminal prosecution under Section 213 of P.D. No. 1096.[11] Lastly, the 1991 Local Government Code does not empower the mayor to order the demolition of anything unless the interested party was afforded prior hearing and unless the provisions of law pertaining to demolition are satisfied.[12] Thus, Baniqued prayed for the following reliefs:

A. Immediately upon the filing hereof, a temporary restraining order be issued stopping the Defendants, or any other person acting under their orders or authority, from carrying out, or causing to carry out, the demolition of Plaintiff's residential unit at Upper Quezon Hill, Baguio City under Notice of Demolition No. 55;

B. After due notice and hearing, a writ of preliminary injunction be issued for the same purpose as to that of the TRO, and, thereafter, for this preliminary writ to be made permanent;

C. A writ of prohibition be issued, commanding the Defendants to stop carrying out, or causing to carry out, the demolition of the aforesaid unit of the Plaintiffs.[13]

On June 7, 1999, the RTC enjoined the carrying out of the demolition of the house of Baniqued. The hearing on his application for preliminary injunction was also set. [14]

On June 25, 1999, petitioners moved to dismiss[15] the complaint of Baniqued on the ground of lack of cause of action because (1) there is nothing to be enjoined "as

there is no Demolition Order issued by the City Mayor" and that the Demolition Team "does not demolish on the basis of a mere Notice of Demolition"; (2) he has "no clear legal right to be protected as his structure is illegal, the same having been built on a land he does not own without the consent of the owner thereof and without securing the requisite building permit"; (3) the Notice of Demolition "was issued in accordance with law and in due performance of the duties and functions of defendants, who being public officers, are mandated by law to enforce all pertinent laws against illegal constructions"; and that (4) "[d]efendants do not exercise judicial and quasi-judicial functions. Neither was the issuance of the assailed Notice of Demolition an exercise of a ministerial function. Nor is there any allegation in the complaint that defendants acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction."[16]

RTC and CA Dispositions

On October 15, 1999, the RTC granted the motion of petitioners and dismissed the complaint of Baniqued with the following disposition:

> WHEREFORE, finding merit in the motion to dismiss filed by the defendant, the same is hereby GRANTED and this case is hereby DISMISSED without pronouncement as to costs.
>
> Atty. Melanio Mauricio is hereby cited for contempt of court and is hereby warned that a repetition of his use of improper language whether orally or in any of his pleadings will be dealt with more severely in the future.
>
> SO ORDERED.[17]

The RTC reasoned that petitioners "are unquestionably members of the executive branch whose functions are neither judicial nor quasi-judicial."[18] The RTC also sustained the argument of petitioners that "the act complained of can hardly qualify as ministerial in nature as to put it within the ambit of the rule on prohibition."[19] Lastly, the complaint of Baniqued was procedurally infirm because he failed to exhaust administrative remedies.[20]

Baniqued moved for reconsideration[21] which was opposed.[22] On March 3, 2000, the RTC denied the motion.[23]

Refusing to give up, Baniqued appealed the decision of the RTC. The CA sustained Baniqued, disposing as follows:

> **IN VIEW OF ALL THE FOREGOING,** the instant petition is **GRANTED** and the appealed Orders dated October 15, 1999 and March 3 2000 are both **RECALLED** and **SET ASIDE** and a new one issued **DENYING** the Motion to Dismiss dated June 25, 1999. After the finality of this judgment, let the entire original records of the case at bench be returned to the court *a quo* which is reminded to decide the case on the merits and with dispatch. No pronouncement as to costs.
>
> SO ORDERED.[24]

According to the CA, it may be true that the mayor is an executive official. However, as such, he has also been given the authority to hear controversies involving property rights. In that regard, the Mayor exercises quasi-judicial functions.[25]

The CA also held that the allegations in the complaint of Baniqued state a cause of action. The averments in the complaint call for a determination whether court action is needed before Baniqued can be ousted from the questioned lot.[26]

Petitioners attempted at a reconsideration[27] to no avail. Left with no other recourse, they interposed the present appeal.[28]

Issues

Petitioners impute to the CA the following errors, *viz.*:

1. THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN RULING THAT THE ACT OF THE CITY MAYOR IN ISSUING A NOTICE OF DEMOLITION IS A QUASI-JUDICIAL FUNCTION;

2. THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN RULING THAT THE ACTION OF PROHIBITION FILED BY BANIQUED WITH THE TRIAL COURT IS PROPER UNDER THE CIRCUMSTANCES;

3. THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION IN REVERSING THE DECISION OF THE TRIAL COURT. [29] (Underscoring supplied)

In sum, petitioners claim that Baniqued incorrectly availed of the remedy of prohibition.

Our Ruling

The petition is unmeritorious.

Baniqued correctly availed of the remedy of prohibition. Prohibition or a "writ of prohibition" is that process by which a superior court prevents inferior courts, tribunals, officers, or persons from usurping or exercising a jurisdiction with which they have not been vested by law.[30] As its name indicates, the writ is one that commands the person or tribunal to whom it is directed not to do something which he or she is about to do. The writ is also commonly defined as one to prevent a tribunal possessing judicial or quasi-judicial powers from exercising jurisdiction over matters not within its cognizance or exceeding its jurisdiction in matters of which it has cognizance.[31] At common law, prohibition was a remedy used when subordinate courts and inferior tribunals assumed jurisdiction which was not properly theirs.

> Prohibition, at common law, was a remedy against encroachment of jurisdiction. Its office was to restrain subordinate courts and inferior judicial tribunals from extending their jurisdiction and, in adopting the

> remedy, the courts have almost universally preserved its original common-law nature, object and function. Thus, as a rule, its proper function is to prevent courts, or other tribunals, officers, or persons from usurping or exercising a jurisdiction with which they are not vested by law, and confine them to the exercise of those powers legally conferred. However, the function of the writ has been extended by some authorities to cover situations where, even though the lower tribunal has jurisdiction, the superior court deems it necessary and advisable to issue the writ to prevent some palpable and irremediable injustice, and, x x x the office of the remedy in some jurisdictions has been enlarged or restricted by constitutional or statutory provisions. While prohibition has been classified as an equitable remedy, it is generally referred to as a common-law remedy or writ; it is a remedy which is in nature legal, although, x x x its issuance is governed by equitable principles.[32] (Citations omitted)

Prohibition is not a new concept. It is a remedy of ancient origin. It is even said that it is as old as common law itself. The concept originated in conflicts of jurisdiction between royal courts and those of the church.[33] In our jurisdiction, the rule on prohibition is enshrined in Section 2, Rule 65 of the Rules on Civil Procedure, to wit:

> Sec. 2. *Petition for prohibition*. - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that the judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as the law and justice require.
>
> The petition shall likewise be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

It is very clear that before resorting to the remedy of prohibition, there should be "no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law." Thus, jurisprudence teaches that resort to administrative remedies should be had first before judicial intervention can be availed of.

> This Court in a long line of cases has consistently held that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction then such remedy should be exhausted first before court's judicial power can