556 Phil. 794

THIRD DIVISION

[G.R. NOS. 167006-07, August 14, 2007]

DANILO D. COLLANTES, PETITIONER, VS. HON. SIMEON MARCELO, IN HIS CAPACITY AS OMBUDSMAN, AND THE FACT FINDING INTELLIGENCE BUREAU AS REPRESENTED BY ATTY. MARIA OLIVIA ELENA A. ROXAS, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

This special civil action for *certiorari* and prohibition under Rule 65 of the Rules of Court seeks to annul and set aside the Memorandum[1] of the Office of the Ombudsman (Ombudsman), dated May 11, 2004. The Ombudsman recommended the filing of an Information for violation of Section 3(e) of Republic Act (R.A) No. 3019 (Anti-Graft and Corrupt Practices Act), as amended, against Salvador Pleyto (Pleyto), Oscar Baraquero (Baraquero), Carlos Z. Rodenas (Rodenas), Teresita Fabian-Pamintuan (Pamintuan) and petitioner Danilo Collantes (Collantes). The petition likewise assails its Supplemental Order[2] dated December 14, 2004, which denied the Motion for Reconsideration filed by Baraquero, Rodenas and petitioner.

Virgilio Cervantes (Cervantes) was the owner of two (2) parcels of land located at *Barangay* Sampaloc, Tanay, Rizal, covered by Transfer Certificate of Title (TCT) Nos. M-10944 and M-15213 (448471), with land areas of 46,481 and 13,019 square meters, respectively, or a total of 59,500 square meters. Sometime in the 1970s, the government, through the Department of Public Works and Highways (DPWH), took 21,558 square meters of the said parcels of land and constructed thereon the Marikina-Infanta Road (Marcos Highway).[3] However, despite actual taking of the property, Cervantes did not demand nor receive just compensation, and he remained the registered owner until 1999.[4]

In 1998, Cervantes sold the subject parcels of land (59,500 sq. m.), together with other parcels, to R.J. Pamintuan Furnishing Corporation (RJ Pamintuan). Actual sale of the subject properties was effected on March 2, 1999. Consequently, the TCTs in the name of Cervantes were cancelled and new ones[5] were issued in the name of RJ Pamintuan.[6]

It appears that prior to the said transfer of titles, RJ Pamintuan already claimed just compensation for the affected portions of the parcels of land. The claim was referred to DPWH Regional Director Pleyto, who in turn requested[7] the Rizal Provincial Appraisal Committee (R-PAC)[8] to fix the "current market value" of the subject land. Initially, the R-PAC refused[9] to act on Pleyto's request. However, R-PAC later acceded and fixed the market value of the property at P606.66 per square meter.[10] The R-PAC, thus, concluded that the fair market value of the property may be

fixed between P19,752,697.93 and P21,181,612.50, taking into consideration the value of the property as appraised, together with the consequential damages on the remaining land and fruit-bearing trees.[11]

After a series of consultation with the DPWH Legal Services, RJ Pamintuan, represented by Teresita Pamintuan, and the Republic of the Philippines, represented by Salvador Pleyto, executed a Deed of Absolute Sale with Quitclaim,[12] involving 14,761 square meters, fixed at P982.54 per square meter, for a total consideration of P14,503,272.94. Pamintuan waived and renounced her rights on the remaining 6,797 square meters.

In a letter-complaint dated July 23, 1999, a certain "Gabriela" claimed that the above transaction is anomalous and thus requested the Office of the Ombudsman to conduct an investigation. Hence, the Ombudsman conducted a fact-finding investigation for possible violation of Section 3(e), (g), and (j) of R.A. No. 3019 against Pleyto, Romeo Panganiban, Lamberto A. Aguilar, and Godofredo T. Zabale of the DPWH, and the members of R-PAC, including herein petitioner. The cases were docketed as OMB-O-99-2364 to 2366.

After due proceedings, Graft Investigation Officer Wilfred L. Pascasio issued a Joint Resolution[13] recommending the filing of an Information for violation of Section 3(e) of R.A. No. 3019, as amended. This joint resolution was, however, set aside on October 2, 2002 by Graft Investigation Officer II Julita Calderon, who issued a Memorandum[14] recommending the provisional dismissal and further investigation of the cases. Thus:

> It appears therefore that the pieces of evidence at hand are still insufficient to establish the existence of undue injury or the giving of unwarranted benefits to private respondent absence of (sic) the disbursement vouchers, the check which the DPWH issued in payment to the private respondent or cash amount, if any, and such other documents which would sufficiently establish that the payment in the amount of P14,683,727.94 were actually effected by the DPWH in favor of the private respondent.
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> **FOREGOING PREMISES BEING CONSIDERED**, we most respectfully recommend these complaints lodged against respondents **SALVADOR A. PLEYTO, TERESITA FABIAN-PAMINTUAN, OSCAR R. BARAQUEO** (sic), **DANILO O. COLLANTES** and **CARLOS Z. RODENAS** be provisionally **DISMISSED**, without prejudice to the refiling of the same in case the complainant (FFIB) will be able to present sufficient evidence to establish that the contract alluded to in the complaint had been actually been implemented.
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> Meanwhile, let [the] entire records of this case be reproduced, downgraded as a CPL and thereafter referred to the FFIB for further fact finding investigation.

> **ACCORDINGLY**, the herein Joint Resolution dated April 18, 2001 penned by GIO Pascasio is thus **SET ASIDE**.[15]

The Acting Ombudsman approved the recommendation on October 5, 2002.

After further fact-finding investigation, the Fact Finding and Intelligence Bureau (FFIB) revived the cases filed against the DPWH officials[16] and the members of R-PAC, with the case docketed as OMB C-C-03-0383-G.

Baraquero, Collantes, and Rodenas of the RPAC filed their Joint Counter-Affidavit (with Manifestation).[17] They moved for the dismissal of the case arguing that similar cases had already been filed and dismissed for lack of evidence, and, therefore, the revival is unwarranted. Likewise, they denied the charges against them alleging that they only acted on the request of Pleyto to fix the current market value of the property. They did so by conducting a hearing and investigation. Thereafter, they issued the appraisal report. Finally, they denied liability for the contract, arguing that they had no hand in its execution.

On March 31, 2004, Graft Investigator and Prosecution Officer Richard P. Palpal-Latoc submitted a Joint Resolution,[18] recommending the dismissal of the complaint. But the same was disapproved upon review by Assistant Ombudsman Pelagio S. Apostol, who found probable cause and recommended the filing of the Information for violation of Section 3(e) of R.A No. 3019:

> **WHEREFORE**, let an information be filed forthwith in Court for the prosecution of respondents **SALVADOR A. PLEYTO, OSCAR R. BARAQUERO, DANILO O. COLLANTES, CARLOS Z. RODENAS, AND TERESITA FABIAN PAMINTUAN** for violation of Section 3 (e) of Republic Act 3019, as amended.
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> The complaint against **ROMEO PANGANIBAN, LAMBERTO A. AGUILAR and GODOFREDO T. ZABALE** be **DISMISSED** for insufficiency of evidence.
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> It is further recommended, that then Assistant Secretary Manuel G. Bunan (sic) and then Secretary Gregorio R. Vigilar be subjected to fact-finding investigation for possible gross inexcusable negligence in violation of Section 3 (e) of R.A. 3019, as amended.[19]

This was approved by the Ombudsman on September 20, 2004.

An Urgent Joint Motion for Reconsideration was filed by Baraquero, Collantes, and Rodenas, but the Ombudsman denied the same in the assailed Supplemental Order, [20] for having been tardily filed and for lack of merit.

Hence, this petition by Collantes, positing these issues:

I

> WHETHER OR NOT PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN HE RECOMMENDED THE FILING OF INFORMATION AGAINST PETITIONER

FOR ALLEGED VIOLATION OF SECTION 3(e) OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT DESPITE LACK OF PROBABLE CAUSE AGAINST HIM.

II

WHETHER OR NOT PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION WHEN HE FAILED TO RECONSIDER THE MEMORANDUM DATED 11 MAY 2004 DESPITE COMPELLING REASONS FOR THE REVERSAL THEREOF.[21]

We find merit in the petition.

The rule is that as far as crimes cognizable by the Sandiganbayan are concerned, the determination of probable cause during the preliminary investigation is a function that belongs to the Office of the Ombudsman. The Ombudsman is empowered to determine, in the exercise of his discretion, whether probable cause exists, and to charge the person believed to have committed the crime as defined by law.[22] As a rule, courts should not interfere with the Ombudsman's investigatory power, exercised through the Ombudsman Prosecutors, and the authority to determine the presence or absence of probable cause, except when the finding is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. In such case, the aggrieved party may file a petition for *certiorari* under Rule 65 of the Rules of Court.[23] Petitioner thus rightly elevated his case to this Court ascribing grave abuse of discretion on the part of the Ombudsman in giving due course to the complaint.

There is grave abuse of discretion where power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, so patent and gross as to amount to evasion of a positive duty or virtual refusal to perform a duty enjoined by law.[24] When the Ombudsman does not take essential facts into consideration in the determination of probable cause, there is abuse of discretion.[25] The Court has consistently issued a writ of *certiorari* in any of the following instances:

1. When necessary to afford adequate protection to the constitutional rights of the accused;

2. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;

3. When there is a prejudicial question that is *sub judice*;

4. When the acts of the officer are without or in excess of authority;

5. Where the prosecution is under an invalid law, ordinance or regulation;

6. When double jeopardy is clearly apparent;

7. Where the court has no jurisdiction over the offense;

8. Where it is a case of persecution rather than prosecution;

9. Where the charges are manifestly false and motivated by the lust for vengeance;

10. When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied.[26]

Petitioner was charged with violation of Section 3(e) of R.A. No. 3019, which states:

> 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:
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> x x x x
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> (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.

The elements of the offense are: 1) the accused must be a public officer discharging administrative, judicial or official functions; 2) he must have acted with manifest partiality, evident bad faith or inexcusable negligence; and 3) that his action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.[27] Evidently, mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under the law, since the act constitutive of bad faith or partiality must, in the first place, be evident or manifest, respectively, while the negligent deed should be both gross and inexcusable. It is further required that any or all of these modalities ought to result in undue injury to a specified party.[28]

The issue of whether or not there was evident bad faith on the part of petitioner in performing his function as a member of the R-PAC, is most relevant in the instant case. The Ombudsman, in finding probable cause, concluded that petitioner acted with evident bad faith because of the allegedly wrong appraisal he made on the subject properties which appeared to be unquestionably high and based on the current market value in 1998 and not at the time of the taking in 1970. We do not agree.

The creation of the PAC, as well its powers and functions, are set forth in Executive Order No. 132, the *Procedure to Be Followed in the Acquisition of Private Property for Public Use and Creating Appraisal Committees*. The said order clearly states that the just compensation of properties taken for public use should first be determined by the mutual agreement of the property owner and the government agency involved. In case of failure to arrive at an acceptable agreement, the PAC comes in