

## THIRD DIVISION

[ G.R. NO. 157972, October 30, 2006 ]

**HEIRS OF SPS. LUCIANO AND CONSOLACION VENTURILLO,  
REPRESENTED BY ROWENA B. VENTURILLO-SUCALDITO,  
PETITIONERS, VS. HON. JESUS V. QUITAIN, PRESIDING JUDGE,  
RTC-BR. 15, 11<sup>TH</sup> JUDICIAL REGION, DAVAO CITY AND ENGR.  
MEINRADO R. METRAN, CITY ENGINEER AND BUILDING  
OFFICIAL OF THE CITY OF DAVAO, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

The Heirs of Spouses Luciano and Consolacion Venturillo (Heirs of Venturillo), represented by Rowena B. Venturillo-Sucaldito, assail for having been issued with grave abuse of discretion the Order<sup>[1]</sup> dated April 22, 2003 of the Regional Trial Court of Davao City, Branch 15, which dismissed their petition for mandamus and denied their prayer for injunctive relief.

The following statement of facts is taken from the Court's Resolution<sup>[2]</sup> dated May 15, 2003:

Sometime in 1942, the Spouses Luciano and Consolacion Venturillo occupied a 678-square meter lot in Poblacion, Davao City, said lot being public land. The Venturillo couple erected a house on the said property and begot 11 children, the petitioners herein, during their lifetime.

In 1974, the Davao City Assessor's Office directed the Venturillos to file a Tax Declaration. They complied with the said directive and paid the required taxes. The petitioners then continued the renewal of the tax declarations and paying of taxes.

Sometime in 2000, Rowena Venturillo-Sucaldito filed a sales application with the Department of Environment and Natural Resources (DENR) and the DENR wrote the City Government for its comments regarding her application. In response, respondent City Engineer sent an inspection team to check out the property.

On June 8, 2000, the inspectors submitted a report recommending the approval of Sucaldito's application. No immediate action, however, was taken by respondent City Engineer on the report.

On October 4, 2001, respondent City Engineer asked the petitioners to secure a building permit for the house erected on the lot, after it was shown that said structure had no building permit.

The petitioners then hired an engineer who prepared the necessary plans and other documents, which were submitted to the respondent City Engineer.

On October 27, 2002, the *Sanggunian Barangay* of Barangay 4-A, Poblacion, Davao City passed a resolution requesting the *Sanggunian Panglungsud* of Davao City to declare the portion of the proposed extension of Mayon St., as "suppressed road."<sup>[3]</sup>

On January 8, 2003, respondent City Engineer sent petitioners a Notice of Order of Removal.

On February 13, 2003, the Zoning Administrator wrote petitioners that the area they were occupying is a road right-of-way.

On March 20, 2003, the petitioners herein filed a petition for mandamus with urgent prayer for temporary restraining order (TRO) and preliminary injunction against respondent City Engineer with the RTC of Davao City, docketed as SP Civil Case No. 29597-2003. The trial court granted the temporary restraining order prayed for.

On March 25, 2003, the trial court ordered the parties in a hearing set for March 27, 2003 to determine whether the TRO should be extended for 17 days. Said hearing, however, was cancelled at the manifestation of the respondent City Engineer.

On March 31, 2003, the hearing for the writ of preliminary injunction was set for April 14-15, 2003.

On April 8, 2003, respondent City Engineer moved for an extension of time to file his answer to the petition.

On April 15, 2003, the respondent City Engineer manifested in open court that he was not opposing the application for a writ of preliminary injunction. The trial court then ordered the petitioners to submit their formal offer of exhibits to support their application on April 21, 2003 and the City Engineer to comment upon the same within five days from receipt, after which the trial court would rule upon the application for injunction.

On April 22, 2003, petitioner moved to have their tardily filed formal exhibits admitted and submitted their formal offer of exhibits. That same day, the trial court denied the issuance of the writ of preliminary injunction and dismissed the SP Civil Case No. 29597-2003.

The Heirs of Venturillo allege that the trial court gravely abused its discretion when it dismissed their petition for mandamus and denied their prayer for injunction without: (1) ruling on the admissibility of their admittedly tardy formal offer of exhibits; (2) waiting for respondent City Engineer's comment or objection to said formal offer; and (3) without waiting for the answer of the City Engineer in the mandamus case.

In the afore-cited Resolution dated May 15, 2003, the Court, ruling that there is a need to maintain the last, actual, peaceable, and uncontested state of things which preceded the present controversy, directed the parties to maintain the status quo.<sup>[4]</sup>

The Office of the City Legal Officer filed a Comment<sup>[5]</sup> dated July 31, 2003 on behalf of respondent City Engineer Meinrado R. Metran, contending that the trial court's dismissal of the petition for mandamus and denial of the prayer for injunction do not constitute grave abuse of discretion. According to respondent, the Heirs of Venturillo were not able to establish any legal right to demand the issuance of a building permit because the lot on which their structure was constructed remains to be public land delineated as a road right-of-way. Although the Heirs of Venturillo filed a sales application with the DENR, their application was not processed.

Moreover, the Heirs of Venturillo allegedly failed to comply with the indispensable requirement of filing a motion for reconsideration before they sought recourse to this Court *via* a petition for certiorari. Neither did they file an appeal of the trial court's final Order.

The Heirs of Venturillo filed a Reply<sup>[6]</sup> dated December 15, 2003 reiterating their arguments.

In the Resolution<sup>[7]</sup> dated May 19, 2004, the parties were required to file their respective memoranda. Thus, respondent filed a Memorandum<sup>[8]</sup> dated July 15, 2004, while the Heirs of Venturillo filed their Memorandum<sup>[9]</sup> on September 21, 2004.

The general rule is that the remedy to obtain reversal or modification of a judgment on the merits is appeal. This is true even if the error ascribed to the court which rendered judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision.<sup>[10]</sup>

In this case, the Heirs of Venturillo received the assailed Order of the trial court on April 25, 2003. They therefore had 15 days from this date, or until May 10, 2003, within which to file an appeal to the Court of Appeals under Rule 41 of the 1997 Rules of Civil Procedure (Rules of Court) or a petition for review on certiorari to this Court under Rule 45 of the same rules. However, availing of a petition for certiorari under Rule 65 of the Rules of Court, the Heirs of Venturillo filed their petition only on May 12, 2003. It is axiomatic that the special civil action of certiorari cannot be used as a substitute for the lost or lapsed remedy of appeal.<sup>[11]</sup>

Assuming that the Heirs of Venturillo have a cause of action ripe for the extraordinary writ of certiorari, they disregarded the hierarchy of courts when they directly filed their petition with this Court. Considering that the special civil action of certiorari under Rule 65 of the Rules of Court is within the concurrent original jurisdiction of the Supreme Court and the Court of Appeals, the petition should have been initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts.<sup>[12]</sup>

Moreover, the Heirs of Venturillo failed to file a motion for reconsideration of the trial