

THIRD DIVISION

[G.R. NO. 159659, October 16, 2006]

RUBEN S. SIA AND JOSEPHINE SIA, PETITIONERS, VS. PEOPLE OF THE PHILIPPINES AND TERESITA LEE, RESPONDENTS.

DECISION

QUISUMBING, J.:

In this petition for review under Rule 45 of the Rules of Court, the petitioners urge this Court to nullify and set aside the April 25, 2003 Decision,^[1] and the July 29, 2003 Resolution,^[2] of the Court of Appeals in CA G.R. SP No. 68057.

The following facts are culled from the records:

Petitioners Ruben and Josephine Sia were charged before the Regional Trial Court of Naga City, Branch 27 with three counts^[3] of violation of Section 17 of Presidential Decree (P.D.) No. 957, otherwise known as *The Subdivision and Condominium Buyers' Protective Decree*.

On October 15, 2001, the petitioners filed a Consolidated Motion to Quash alleging that (1) the trial court has no jurisdiction over the offense charged; and (2) the City Prosecutors' Office of Naga City has no authority to file the informations.

On October 18, 2001, the trial court denied the motion holding that it had jurisdiction over the case. It also scheduled an arraignment on October 29, 2001. On October 23, 2001, the petitioners filed a Motion to Resolve the Other Ground Raised in the Motion to Quash, *i.e.*, whether the city prosecutor had the authority to file the informations. On October 24, 2001, the trial court denied the motion stating that the city prosecutor was authorized to file the informations. Petitioners' Motion for Reconsideration was likewise denied. Arraignment was then reset to November 21, 2001. Petitioners' Motion for Postponement of their arraignment was also denied. On November 21, 2001, the trial court appointed a counsel *de officio* for petitioner Ruben S. Sia and proceeded with the arraignment.

Before the Court of Appeals, the petitioners filed a Petition for Certiorari with Application for Temporary Restraining Order and Writ of Preliminary Injunction.^[4] The petitioners claimed that the trial court had no jurisdiction over the offenses charged and the city prosecutor had no authority to file the informations; that only the enforcement officers under Executive Order No. 71^[5] are authorized to investigate and enforce laws pertaining to subdivisions. Moreover, they asserted that petitioner Ruben S. Sia was denied his right to counsel when the trial court forced him to enter a plea with only a counsel *de officio*.

The Court of Appeals dismissed the petition as follows:

WHEREFORE, the foregoing considered, the instant petition is hereby **DISMISSED** and the assailed orders **AFFIRMED in toto**. No costs.

SO ORDERED.^[6]

The appellate court upheld the jurisdiction of the trial court for the following reasons: (1) the informations stated that petitioners violated Section 17 of P.D. No. 957 by failing to register with the Register of Deeds of Naga City, the Contracts to Sell they executed in favor of respondent Teresita Lee over several subdivision lots she purchased; (2) the acts complained of were within the trial court's territorial jurisdiction; and (3) the penalty provided by law for the violation, *i.e.*, imprisonment of not more than ten years, is within the trial court's jurisdiction. Similarly, the appellate court sustained the city prosecutor's authority to file the informations conformably with Section 5, Rule 110 of the Rules of Court.^[7] Finally, it ruled that the trial court did not transgress petitioner Ruben S. Sia's right to counsel since the preference in the choice of counsel expressed in Section 12, Article III of the 1987 Constitution^[8] does not necessarily mean that such choice by a person under investigation is exclusive as to preclude other equally competent and independent lawyers from handling the defense.

Hence, this petition. The petitioners enumerate the grounds of their appeal, as follows:

[a] x x x the alleged act or omission complained of and charged in the questioned Informations [do not] constitute a violation of Presidential Decree No. 957 otherwise known as the Subdivision and Condominium Buyers' Protective Decree[.]

[b] x x x the City Prosecutors have [no] power or authority to institute and prosecute the present case for alleged violation of the provisions of P.D. 957 even without a prior determination thereof by the Enforcement Officers of the Housing and Land Use Regulatory Board (HLURB)[.]

[c] x x x the herein petitioner Ruben Sia was deprived of his [c]onstitutional right to due process and to counsel considering that he was assisted only by a counsel *de officio* during his arraignment despite his insistence to be assisted by their newly hired counsel *de parte*[.]^[9]

Simply stated, the issues are: (1) Did the charges in the informations constitute violations of P.D. No. 957? (2) Does the City Prosecutors' Office of Naga City have authority to file the informations? and (3) Was petitioner Ruben S. Sia deprived of his right to counsel when only a counsel *de officio* assisted him during his arraignment?

After considering the submission of the parties, we find the present petition without merit.

On the *first* issue, petitioners contend that P.D. No. 957 is applicable only to residential subdivision and condominium projects and not to commercial subdivision projects as in this case, and that the property involved had been classified commercial and industrial in City Ordinance No. 93-041^[10] and Resolution No. 93-

261^[11] of the *Sangguniang Panlungsod* of Naga City. Furthermore, petitioners add, the documents required to be registered with the Register of Deeds under Section 17 of P.D. No. 957, refer to lands that have been converted into a subdivision project for residential purposes.

Respondent Lee maintains that petitioners' Development Permit (DP No. 92-0415) showed that the project was classified as socialized housing while the Zoning Administrator's Certification dated May 14, 1992, indicated that the project was situated in a residential zone in accordance with the Zoning Ordinance of Naga City. Thus, petitioners' subdivision is residential. She also asserts that under Section 17 of P.D. No. 957, the registration of the subdivision plan by the owner of a parcel of land who caused its conversion into a subdivision is different from the subsequent registration of the contracts to sell, deeds of sale and other similar instruments required by the same provision. Hence, according to respondent, the petitioners are required to register the Contracts to Sell in her favor.

Pertinent here is Section 2 of P.D. No. 957, that defines a subdivision project as "a tract or a parcel of land registered under Act No. 496 which is partitioned primarily for residential purposes into individual lots with or without improvements thereon, and offered to the public for sale, in cash or in installment terms. It shall include all residential, commercial, industrial and recreational areas, as well as open spaces and other community and public areas in the project."

Observe that the provision does not confine the meaning of "subdivision project" to parcels of land classified as residential, contrary to what petitioners restrictively propose. A subdivision project also includes parcels of land classified as commercial. Indeed, the crucial requirement is that the subdivision project is partitioned primarily for residential purposes, even if it is situated in a commercial district.

In this case, the subdivision project was intended primarily for residential purposes. No less than petitioners' Development Permit showed that the project was for socialized housing. Although the location of the subdivision was classified as a commercial district, the subdivision project continued to be for residential purposes and was not removed from the ambit of P.D. No. 957.

We have examined Sections 4 and 17 of P.D. No. 957, and found petitioners' interpretation thereof, flawed. We quote these sections for clarity:

SEC. 4. Registration of Projects. - The registered owner of a parcel of land who wishes to convert the same into a subdivision project shall submit his subdivision plan to the Authority which shall act upon and approve the same, upon a finding that the plan complies with the Subdivision Standards and Regulations enforceable at the time the plan is submitted. The same procedure shall be followed in the case of a plan for a condominium project except that, in addition, said Authority shall act upon and approve the plan with respect to the building or buildings included in the condominium project in accordance with the National Building Code (R.A. No. 6541).

The subdivision plan, as so approved, shall then be submitted to the Director of Lands for approval in accordance with the procedure

prescribed in Section 44 of the Land Registration Act (Act No. 496, as amended by R.A. No. 440): *Provided*, that in case of complex subdivision plans, court approval shall no longer be required. The condominium plan as likewise so approved, shall be submitted to the Register of Deeds of the province or city in which the property lies and the same shall be acted upon subject to the conditions and in accordance with the procedure prescribed in Section 4 of the Condominium Act (R.A. No. 4726).

x x x x

SEC. 17. Registration. - All contracts to sell, deeds of sale and other similar instruments relative to the sale or conveyance of the subdivision lots and condominium units, whether or not the purchase price is paid in full, shall be registered by the seller in the Office of the Register of Deeds of the province or city where the property is situated.

Whenever a subdivision plan duly approved in accordance with Section 4 hereof, together with the corresponding owner's duplicate certificate of title, is presented to the Register of Deeds for registration, the Register of Deeds shall register the same in accordance with the provisions of the Land Registration Act, as amended: *Provided*, however, that if there is a street, passageway or required open space delineated on a complex subdivision plan hereafter approved and as defined in this Decree, the Register of Deeds shall annotate on the new certificate of title covering the street, passageway or open space, a memorandum to the effect that except by way of donation in favor of a city or municipality, no portion of any street, passageway, or open space so delineated on the plan shall be closed or otherwise disposed of by the registered owner without the requisite approval as provided under Section 22 of this Decree.

Simply stated, P.D. No. 957 provides that when a registered owner of a parcel of land wishes to convert the same into a subdivision project, he must register the subdivision plan with the Housing and Land Use Regulatory Board (HLURB) (*Section 4*). Should he decide to sell the lots therein, he must also register the subdivision project with the HLURB and the subdivision plan with the Register of Deeds (*Section 17, paragraph 2*). Thereafter, a registration certificate is issued to the subdivision owner and he may then apply for a License to Sell the lots in the subdivision project.

Whenever a lot is subsequently sold, the subdivision owner is required to register the contract to sell, deed of sale and/or other similar instrument with the Register of Deeds (*Section 17, paragraph 1*).

From the foregoing, it is clear that petitioners are required to register the Contracts to Sell in favor of respondent Lee, and their failure to do so is a violation of Section 17 of P.D. No. 957.

On the *second* issue, does the City Prosecutors' Office of Naga City have authority to file the informations?

Section 3 of E.O. No. 71 provides that: