

SECOND DIVISION

[G.R. No. 145972, March 23, 2004]

**IGNACIA BALICAS, PETITIONER, VS. FACT-FINDING &
INTELLIGENCE BUREAU (FFIB), OFFICE OF THE OMBUDSMAN,
RESPONDENT.**

D E C I S I O N

QUISUMBING, J.:

This petition for review on *certiorari* assails the Court of Appeals' decision^[1] dated August 25, 2000 and resolution^[2] of November 13, 2000 in CA-G.R. SP No. 56386, which affirmed the Ombudsman's decision^[3] dismissing petitioner from government service for gross neglect of duty in connection with the tragedy at the Cherry Hills Subdivision in Antipolo City on August 3, 1999.

The antecedent facts as summarized in the Ombudsman's decision are as follows:

Based on the evidence adduced by the complainant, the following is the chronological series of events which led to the development of the CHS (Cherry Hills Subdivision):

August 28, 1990 — Philjas Corporation, whose primary purposes, among others are: to own, develop, subdivide, market and provide low-cost housing for the poor, was registered with the Securities and Exchange Commission (SEC).

February 19, 1991 — then City Mayor Daniel S. Garcia, endorsed to the Housing and Land Use Regulatory Board (HLURB) the proposed CHS.

Thereafter, or on 07 March 1991, based on the favorable recommendations of Mayor Garcia, respondent TAN, issued the Preliminary Approval and Locational Clearance (PALC) for the development of CHS.

On July 5, 1991, then HLURB Commissioner respondent TUNGPALAN issued Development Permit No. 91-0216 for "land development only" for the entire land area of 12.1034 hectares covered by TCT No. 35083 (now TCT 208837) and with 1,003 saleable lots/units with project classification B.P. 220 Model A-Socialized Housing (p. 96, Records), with several conditions for its development.

Three (3) days thereafter or on July 8, 1991, respondent JASARENO, allowed/granted the leveling/earth-moving operations of the development project of the area subject to certain conditions.

On November 18, 1991, then HLURB Commissioner AMADO B. DELORIA issued Certificate of Registration No. 91-11-0576 in favor of CHS, with

License to Sell No. 91-11-0592 for the 1,007 lots/units in the subdivision.

Eventually, on December 10, 1991, respondent POLLISCO issued Small Scale Mining Permit (SSMP) No. IV-316 to Philjas to extract and remove 10,000 cu. meters of filling materials from the area where the CHS is located.

Thereafter, or on January 12, 1994, Philjas applied for a Small Scale Mining Permit (SSMP) under P.D. 1899 with the Rizal Provincial Government to extract and remove 50,000 metric tons of filling materials per annum on CHS' 2.8 hectares.

Thus, on January 17, 1994, respondent MAGNO, informed ELIEZER I. RODRIGUEZ of Philjas that CHS is within the EIS System and as such must secure ECC from the DENR. Philjas was accordingly informed of the matter such that it applied for the issuance of ECC from the DENR-Region IV, on February 3, 1994.

On March 12, 1994, an Inspection Report allegedly prepared by respondent BALICAS, attested by respondent RUTAQUIO and approved by respondent TOLENTINO re: field evaluation to the issuance of ECC, was submitted.

Consequently, on April 28, 1994, upon recommendations of respondent TOLENTINO, Philjas' application for ECC was approved by respondent PRINCIPE, then Regional Executive Director, DENR under ECC-137-R1-212-94.

A Mining Field Report for SSMP dated May 10, 1994 was submitted pursuant to the inspection report prepared by respondents CAYETANO, FELICIANO, HILADO and BURGOS, based on their inspection conducted on April 25 to 29, 1994. The report recommended, among others, that the proposed extraction of materials would pose no adverse effect to the environment.

Records further disclosed that on August 10, 1994, respondent BALICAS monitored the implementation of the CHS Project Development to check compliance with the terms and conditions in the ECC. Again, on August 23, 1995, she conducted another monitoring on the project for the same purpose. In both instances, she noted that the project was still in the construction stage hence, compliance with the stipulated conditions could not be fully assessed, and therefore, a follow-up monitoring is proper. It appeared from the records that this August 23, 1995 monitoring inspection was the last one conducted by the DENR.

On September 24, 1994, GOV. CASIMIRO I. YNARES, JR., approved the SSMP applied for by Philjas under SSMP No. RZL-012, allowing Philjas to extract and remove 50,000 metric tons of filling materials from the area for a period of two (2) years from date of its issue until September 6, 1996.^[4]

Immediately after the tragic incident on August 3, 1999, a fact-finding investigation was conducted by the Office of the Ombudsman through its Fact-Finding and

Intelligence Bureau (FFIB), which duly filed an administrative complaint with the Office of the Ombudsman against several officials of the Housing and Land Use Regulatory Board (HLURB), Department of Environment and Natural Resources (DENR), and the local government of Antipolo.

The charge against petitioner involved a supposed failure on her part to monitor and inspect the development of Cherry Hills Subdivision, which was assumed to be her duty as DENR senior environmental management specialist assigned in the province of Rizal.

For her part, petitioner belied allegations that monitoring was not conducted, claiming that she monitored the development of Cherry Hills Subdivision as evidenced by three (3) monitoring reports dated March 12, 1994, August 10, 1994 and August 23, 1995. She averred that she also conducted subsequent compliance monitoring of the terms and conditions of Philjas' Environmental Compliance Certificate (ECC) on May 19, 1997 and noted no violation thereon. She further claimed good faith and exercise of due diligence, insisting that the tragedy was a fortuitous event. She reasoned that the collapse did not occur in Cherry Hills, but in the adjacent mountain eastern side of the subdivision.

On November 15, 1999, the Office of the Ombudsman rendered a decision imposing upon petitioner the supreme penalty of dismissal from office for gross neglect of duty finding:

RESPONDENT BALICAS

Records show that she monitored and inspected the CHS [Cherry Hills Subdivision] only thrice (3), to wit:

1. Inspection Report dated 12 March 1994
2. Monitoring Report dated 10 August 1994
3. Monitoring Report dated 23 August 1995

Verily, with this scant frequency, how can respondent Balicas sweepingly claim that there was no violation of ECC compliance and that she had done what is necessary in accordance with the regular performance of her duties. She herself recognized the fact that the "collapsed area is not the subdivision in question but the adjacent mountain eastern side of the CHS." It is incumbent upon her to establish the same in her monitoring and inspection reports and make objective recommendations re: its possible adverse effect to the environment and to the residents of the CHS and nearby areas. Her defense that the position of the CHS shows the impossibility of checking the would-be adverse effect clearly established her incompetence. No expert mind is needed to know that mountains cause landslide and erosion. Cherry Hills Subdivision is a living witness to this.^[5]

Petitioner seasonably filed a petition for review of the Ombudsman's decision with the Court of Appeals. In its decision dated August 25, 2000, the Court of Appeals dismissed the petition for lack of merit and affirmed the appealed decision. It found that the landslide was a preventable occurrence and that petitioner was guilty of gross negligence in failing to closely monitor Philjas' compliance with the conditions