

THIRD DIVISION

[G.R. No. 182567, July 13, 2009]

**GUILLERMO M. TELMO, PETITIONER, VS. LUCIANO M.
BUSTAMANTE, RESPONDENT.**

D E C I S I O N

NACHURA, J.:

For our consideration is a Petition^[1] for Review on *Certiorari* under Rule 45 of the Rules of Court in relation to Section 27, paragraph 3 of the Ombudsman Act of 1989 (Republic Act No. 6770). Subject of the Petition is the Decision^[2] dated October 13, 2005 and the Order^[3] dated March 17, 2006 of the Office of the Deputy Ombudsman for Luzon.

This case arose from the Verified Complaint^[4] filed by respondent Luciano M. Bustamante before the Office of the Deputy Ombudsman for Luzon against petitioner Guillermo Telmo, Municipal Engineer of Naic, Cavite, Danilo Consumo, Barangay (Brgy.) Chairman, Brgy. Halang, Naic, Cavite, and Elizalde Telmo, a private individual.

The complaint alleged that respondent is a co-owner of a real property of 616 square meters in Brgy. Halang, Naic, Cavite, known as Lot 952-A and covered by Transfer Certificate of Title No. T-957643 of the Register of Deeds of Cavite. Petitioner and Elizalde Telmo (Telmos) are the owners of the two (2) parcels of land denominated as Lot 952-B and 952-C, respectively, located at the back of respondent's lot. When his lot was transgressed by the construction of the Noveleta-Naic-Tagaytay Road, respondent offered for sale the remaining lot to the Telmos. The latter refused because they said they would have no use for it, the remaining portion being covered by the road's 10-meter easement.

The complaint further alleged that, on May 8, 2005, respondent caused the resurvey of Lot 952-A in the presence of the Telmos. The resurvey showed that the Telmos encroached upon respondent's lot. Petitioner then uttered, *"Hangga't ako ang municipal engineer ng Naic, Cavite, hindi kayo makakapagtayo ng anuman sa lupa n'yo; hindi ko kayo bibigyan ng building permit."*

On May 10, 2005, respondent put up concrete poles on his lot. However, around 7:00 p.m. of the same day, the Telmos and their men allegedly destroyed the concrete poles. The following day, respondent's relatives went to Brgy. Chairman Consumo to report the destruction of the concrete poles. Consumo told them that he would not record the same, because he was present when the incident occurred. Consumo never recorded the incident in the *barangay* blotter.

Respondent complained that he and his co-owners did not receive any just compensation from the government when it took a portion of their property for the

construction of the Noveleta-Naic-Tagaytay Road. Worse, they could not enjoy the use of the remaining part of their lot due to the abusive, Illegal, and unjust acts of the Telmos and Consumo. Respondent charged the latter criminally--for violation of Article 312^[5] of the Revised Penal Code and Section 3(e)^[6] of Republic Act No. 3019^[7]-- and administratively--for violation of Section 4 (a)^[8], (b)^[9], (c)^[10], and (e)^[11] of Republic Act No. 6713.^[12]

In his Counter-Affidavit,^[13] petitioner denied having uttered the words attributed to him by respondent, and claimed that he only performed his official duties in requiring an application for a building permit before any structure can be erected on government property. He said that respondent insisted on enclosing with barbed wire and concrete posts the lot that already belonged to the national government, which had now been converted into a national road. He also alleged that if he allowed the enclosures erected by the respondent, other residents would be denied ingress to and egress from their own properties.

In his own counter-affidavit, Consumo denied collusion with petitioner in not recording in the *barangay* blotter the subject incident. He explained that on May 10, 2005 at around 5:00 p.m., he was summoned by petitioner to intercede, because the respondent and his men were fencing the subject property. Consumo obliged, personally saw the fence being built, and observed that even the trucks owned by petitioner were enclosed therein. When he asked respondent if he had the necessary permit and the proper *barangay* clearance to do so, respondent's lawyer, Atty. San Gaspar, replied that there was no need for the permit and clearance since respondent was just fencing his own property. Thus, Consumo could not prevent the ongoing fencing, but told respondent and company to wait for petitioner to decide the matter.

Consumo further alleged that after putting up the fence, respondent and his companions left without waiting for the arrival of petitioner. When petitioner arrived, he explained to the people present that the property enclosed by respondent is owned by the government and that no one is allowed to construct any fence without a permit from him, as the Municipal Engineer, or from any building official of the local government of Naic, Cavite. Consumo said that the residents affected by the fence constructed by respondent were the ones who pulled out the concrete posts in order to provide access to the national road. These residents included the petitioner, whose trucks used for delivering sand and hollow blocks were enclosed and also denied access.

In his Counter-Affidavit,^[14] Elizalde Telmo denied having encroached, occupied or taken possession of respondent's property. He claimed that, on May 10, 2005, he was merely an onlooker to the altercation between petitioner and respondent. He said that petitioner, his brother, insisted that respondent could not enclose the property in question unless the latter obtains a building permit from the Office of the Municipal Engineer/Building Official, since it appeared that the subject property was no longer a property of respondent but was converted into government property by virtue of the 30-meter road set-back imposed by the Zoning Ordinance of the Municipality of Naic, Cavite. Elizalde Telmo stated that he did not offer any resistance to the fencing of the property in question. He observed, though, that when they learned that petitioner was arriving at the place, respondent and his companions just left the vicinity.

Later, petitioner and respondent filed their respective position papers^[15] upon the directive of the Graft Investigating and Prosecuting Officer. Their position papers reiterated the allegations made in their respective affidavits earlier submitted.

In the Decision^[16] dated October 13, 2005, the Office of the Deputy Ombudsman for Luzon found petitioner and Danilo Consumo administratively liable, but dismissed the charge against Elizalde Telmo for lack of jurisdiction over his person, he being a private individual. The dispositive portion of the Decision states--

WHEREFORE, premises considered, the undersigned investigator respectfully recommends the following, to wit:

(1) That the administrative complaint against respondent Elizalde Telmo be **DISMISSED** for lack of jurisdiction;

(2) That respondent Guillermo Telmo be meted the **PENALTY OF FINE EQUIVALENT TO SIX (6) MONTHS SALARY** for violation of Section 4 of Republic Act No. 6713; and

(3) That respondent Danilo Consumo be meted the **PENALTY OF FINE EQUIVALENT TO THREE (3) MONTHS HONORARIA** for violation of Section 4 of Republic Act No. 6713.

SO DECIDED.^[17]

Petitioner filed a Motion for Reconsideration,^[18] wherein he elaborated that he just performed his official duties when he summarily removed the concrete posts erected by respondent to enclose the property.

In the Order^[19] dated March 17, 2006, the Office of the Deputy Ombudsman for Luzon denied the Motion for Reconsideration for lack of merit.

Hence, this petition anchored on the following grounds:

A. THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON SERIOUSLY ERRED WHEN HE DECLARED THAT THERE WAS NO VALID TAKING OF RESPONDENT'S LOT BY MEANS OF EXPROPRIATION.

B. THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON SERIOUSLY ERRED WHEN HE DECLARED THAT PETITIONER SHOULD BE AUTHORIZED BY THE MUNICIPAL MAYOR OR BY THE COURT TO ABATE PUBLIC NUISANCE OR NUISANCE PER SE.

C. THE HONORABLE DEPUTY OMBUDSMAN FOR LUZON ERRED WHEN HE METED THE PENALTY OF FINE EQUIVALENT TO SIX (6) MONTHS SALARY FOR VIOLATION OF SECTION 4 OF REPUBLIC ACT NO. 6713.^[20]

In essence, petitioner contends that the property claimed and enclosed with concrete posts by respondent was validly taken by the National Government through its power of eminent domain, pursuant to Executive Order No. 113, as amended by Executive Order No. 253, creating the Noveleta-Naic-Tagaytay Road. In this context, petitioner contends that the concrete posts erected by respondent were a public nuisance under Article 694 (4)^[21] of the Civil Code, more particularly a nuisance *per se*, which may be summarily abated under Article 699 (3)^[22] of the same Code. Petitioner says that as the Municipal Engineer, he is also the Building Official of Naic, Cavite; and thus, it was well within his authority, pursuant to Section 214, paragraph two (2) of the National Building Code, to order the removal of the concrete posts. Petitioner likewise claims that Section 23 of Revised Philippine Highway Act (Presidential Decree No. 17)^[23] mandated him to remove respondent's concrete posts. Petitioner concludes that since he merely performed his official duties in removing the concrete posts erected by petitioner from the property, which is already owned by the government, he must be absolved of any administrative liability.

Instead of filing his comment on the petition, respondent manifested through counsel that he is no longer interested in pursuing this case, submitting therewith his Affidavit of Desistance^[24] dated December 5, 2007. Respondent alleged in the affidavit that the administrative charges he lodged against petitioner were brought about by a misunderstanding between them, which differences have already been settled. Consequently, this case should now be dismissed.

We disagree.

The desistance of the complainant does not necessarily result in the dismissal of the administrative complaint because the Court attaches no persuasive value to a desistance, especially when executed as an afterthought.^[25] It should be remembered that the issue in an administrative case is not whether the complaint states a cause of action against the respondent, but whether the public officials have breached the norms and standards of the public service.^[26] Considering that petitioner admitted in his pleadings that he summarily removed the concrete posts erected by respondent, allegedly within the parameters of his authority as Municipal Engineer of Naic, Cavite, it is only proper that this case be decided on its merits rather than on the basis of the desistance of respondent.

It cannot be denied that respondent's property was taken by the National Government thru the Department of Public Works and Highways when it constructed the Noveleta-Naic-Tagaytay Road. What is not clear from the records of this case is whether respondent's property was taken as part of the national road itself or only as part of the right-of-way easement therefor. We observe that the re-survey plan^[27] of his property attached by respondent to his complaint and the survey plan^[28] of the Noveleta-Naic-Tagaytay Road submitted by petitioner appear to be different. Nevertheless, it is evident from the sketch plans that respondent could not enclose his property because it is now being used by the National Government. Therefore, whatever cause of action respondent may have in his claim for just compensation for the taking of his property, the same should be lodged against the National Government.

While it is settled that respondent does not have the legal right to enclose the property, we should now determine whether petitioner indeed performed his official functions properly.

First. Petitioner claims that his act of summarily removing respondent's concrete posts was authorized under the National Building Code (Presidential Decree No. 1096). The provision he cites correctly pertains to Section 215, which reads--

Sec. 215. *Abatement of Dangerous Buildings.*--When any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the decree of danger to life, health, or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 694 to 707 of the Civil Code of the Philippines.

To better understand this provision, we refer to Section 214 of the same law, which defines what are dangerous and ruinous buildings or structures susceptible of abatement. It provides--

Sec. 214. *Dangerous and Ruinous Buildings or Structures.* Dangerous buildings are those which are herein declared as such or are structurally unsafe or not provided with safe egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health or public welfare because of inadequate maintenance, dilapidation, obsolescence, or abandonment, or which otherwise contribute to the pollution of the site or the community to an intolerable degree.

A careful reading of the foregoing provisions would readily show that they do not apply to the respondent's situation. Nowhere was it shown that the concrete posts put up by respondent in what he believed was his and his co-owners' property were ever declared dangerous or ruinous, such that they can be summarily demolished by petitioner.

What is more, it appears that the concrete posts do not even fall within the scope of the provisions of the National Building Code. The Code does not expressly define the word "building." However, we find helpful the dictionary definition of the word "building," viz:

[A] constructed edifice designed usually covered by a roof and more or less completely enclosed by walls, and serving as a dwelling, storehouse, factory, shelter for animals, or other useful structure - distinguished from structures not designed for occupancy (as fences or monuments) and from structures not intended for use in one place (as boats or trailers) even though subject to occupancy.^[29]