808 Phil. 561

FIRST DIVISION

[G.R. No. 181149*, April 17, 2017]

CITY OF DAVAO, REPRESENTED BY RODRIGO R. DUTERTE, IN HIS CAPACITY AS CITY MAYOR, RIZALINA JUSTOL, IN HER CAPACITY AS THE CITY ACCOUNTANT, AND ATTY. WINDEL E. AVISADO, IN HIS CAPACITY AS CITY ADMINISTRATOR, PETITIONER, VS. ROBERT E. OLANOLAN, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 29, 2006 and the Resolution[3] dated November 21, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 00643 which: (*a*) nullified and set aside the Orders dated September 5, 2005[4] and September 22, 2005[5] of the Regional Trial Court of Davao City, Branch 16 (RTC) in Spec. Civil Case No. 31,005-2005, dismissing the petition for *mandamus* filed by respondent Robert E. Olanolan (respondent) on procedural grounds; and (*b*) directed petitioner City of Davao (petitioner) to immediately release the withheld funds of Barangay 76-A, Bucana, Davao City (Brgy. 76-A).

The Facts

On July 15, 2002, respondent was elected and proclaimed *Punong Barangay* of Brgy. 76-A. On July 25, 2002, an election protest was filed by the opposing candidate, Celso A. Tizon (Tizon), before the Municipal Trial Court in Cities, Davao City (MTCC). Tizon's election protest was initially dismissed by the MTCC, but was later granted by the Commission on Elections (COMELEC), 2nd Division, on appeal. Hence, Tizon was declared the duly-elected *Punong Barangay* of Brgy. 76-A.[6]

Respondent filed a motion for reconsideration[7] before the COMELEC, but to no avail. Thus, he filed a Petition for *Certiorari*, *Mandamus* and Prohibition, with prayer for Issuance of a Temporary Restraining Order[8] (TRO), before the Court, docketed as G.R. No. 165491. On November 9, 2004, the Court *en banc* gave due course to the petition and issued a *Status Quo Ante* Order (SQAO)[9] which was immediately implemented by the Department of Interior and Local Government (DILG). Thus, respondent was reinstated to the disputed office.[10]

Upon his reinstatement, respondent presided over as Punong Barangay of Brgy. 76-A which, in the regular course of business, passed Ordinance No. 01, Series of 2005,[11] on January 5, 2005, otherwise known as the "General Fund Annual Budget of Barangay Bucana for Calendar Year 2005" totalling up to P2,216,180.20. Likewise included in the local government's annual budget is the Personnel Schedule

amounting to P6,348,232.00, which formed part of the budget of the General Administration, appropriated as salaries and *honoraria* for the 151 employees and workers of Brgy. 76-A.[12]

On March 31, 2005, the Court *en banc* rendered a Decision[13] dismissing respondents' petition in G.R. No. 165491. Consequently, it also recalled its SQAO issued on November 9, 2004[14] (Recall Order). Undaunted, respondent filed a motion for reconsideration[15] on April 29, 2005.[16]

In the meantime, the Regional Office of the DILG, Region XI rejected the request of Tizon's legal counsel for immediate implementation of the Court's Recall Order on the ground that the timely filing of respondents' motion for reconsideration had stayed the execution of the March 31, 2005 Decision. The City Legal Officer of petitioner, on the other hand, opined[17] that the Recall Order was in effect, an order of dissolution which is immediately executory and effective. On the basis of the latter's opinion, the City of Davao thus refused to recognize all acts and transactions made and entered into by respondent as *Punong Barangay* after his receipt of the Recall Order as it signified his immediate ouster from the disputed office.[18]

This notwithstanding, the Office of the *Sangguniang* Barangay of Brgy. 76-A issued Resolution No. 115, Series of 2005[19] on June 1, 2005, requesting that the Regional Director of the DILG issue a directive for the officials of petitioner to recognize the legitimacy of respondent as *Punong Barangay* of Brgy. 76-A. On June 6, 2005, respondent wrote a letter to the Regional Office XI of the DILG, endorsing the said Resolution.[20]

Before any action could be taken by the DILG on respondent's letter, or on July 26, 2005, he filed a Petition for *Mandamus etc*.[21] (*mandamus* petition) before the RTC, docketed as Spec. Civil Case No. 31,005-2005, seeking to compel petitioner to allow the release of funds in payment of all obligations incurred under his administration. [22]

In the interim, the Court *en banc* issued a Resolution[23] dated June 28, 2005, denying with finality respondent's motion for the reconsideration of its March 31,2005 Decision in G.R. No. 165491 for lack of merit.[24]

The RTC Ruling

In an Order[25] dated September 5, 2005, the RTC dismissed respondent's *mandamus* petition on the sole ground that there was still an adequate remedy still available to respondent in the ordinary course of law, *i.e.*, his pending request before the DILG Regional Director to recognize his legitimacy and to give due course to the financial transactions of Brgy. 76-A under his administration. In this regard, respondent was deemed to have violated the doctrine of exhaustion of administrative remedies, which perforce warranted the dismissal of his petition.[26]

Dissatisfied, respondent filed a motion for reconsideration but was denied in an Order[27] dated September 22, 2005. Thus, he elevated his case to theCA on

certiorari, docketed as CA-G.R. SP No. 00643.

The CA Ruling

In a Decision[28] dated June 29, 2006, the CA nullified and set aside the RTC's Orders, holding that the latter court gravely abused its discretion in dismissing respondent's *mandamus* petition on the ground of failure to exhaust administrative remedies. In so ruling, the CA observed that an exception to the said doctrine was present in that the *mandamus* petition only raised pure legal questions; hence, the same should not have been dismissed.[29]

Although the RTC confined its ruling on the procedural infirmity of the *mandamus* petition, the CA nonetheless proceeded to resolve the substantive issue of the case, *i.e.*, whether or not petitioner should be compelled by *mandamus* to release the funds under respondent's administration. Ruling in the affirmative, the CA ruled that it is the ministerial duty of petitioner to release the share of Brgy. 76-A in the annual budget. Moreover, it found that the city government is not authorized to withhold the said share, as the Local Government Code only mandates that the *Punong Barangay* concerned be accountable for the execution of the annual and supplemental budgets.[30]

Accordingly, the CA directed petitioner to release the withheld funds of Brgy. 76-A, together with the funds for the compensation of the employees and workers which were already due and payable before the Court's issuance of the June 28, 2005 Resolution denying respondent's motion for reconsideration with finality.[31]

Aggrieved, petitioner moved for reconsideration[32] but was denied in a Resolution[33] dated November 21, 2007; hence, this petition.

The Issue Before the Court

The sole issue in this case is whether or not the CA erred in reversing the RTC's dismissal of respondent's *mandamus* petition.

The Court's Ruling

The petition is meritorious.

"*Mandamus* is defined as a writ commanding a tribunal, corporation, board or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office or which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law."[34] In *Special People, Inc. Foundation v. Canda*,[35] the Court explained that the peremptory writ of *mandamus* is an extraordinary remedy that is issued only in extreme necessity, and the ordinary course of procedure is powerless to afford an adequate and speedy relief **to one who has a clear legal right to the performance of the act to be compelled**.[36]

In this case, respondent has no clear legal right to the performance of the legal act to be compelled. To recount, respondent filed a *mandamus* petition before the RTC, seeking that petitioner, as city government, release the funds appropriated for Brgy. 76-A, together with the funds for the compensation of barangay employees, and all funds that in the future may accrue to Brgy. 76-A, including legal interests until full payment.[37] As it appears, respondent anchors his legal interest to claim such relief on his ostensible authority as *Punong Barangay* of Brgy. 76-A. In this regard, Section 332 of Republic Act No. 7160,[38] otherwise known as the "Local Government Code of 1991," provides that:

> Section 332. Effectivity of Barangay Budgets. - The ordinance enacting the annual budget shall take effect at the beginning of the ensuing calendar year. An ordinance enacting a supplemental budget, however, shall take effect upon its approval or on the date fixed therein.
>
> **The responsibility for the execution of the annual and supplemental budgets and the accountability therefor shall be vested primarily in the punong barangay concerned.** (Emphasis supplied)

However, records clearly show that respondent's proclamation as *Punong Barangay* was overturned by the COMELEC upon the successful election protest of Tizon, who was later declared the duly-elected *Punong Barangay* of Brgy. 76-A. While the Court *en banc* indeed issued an SQAO on November 9, 2004 which temporarily reinstated respondent to the disputed office, the same was recalled on March 31, 2005 when a Decision was rendered dismissing respondent's petition in G.R. No. 165491. The dispositive portion of the said Decision reads:

> WHEREFORE, the petition is DISMISSED. Accordingly, the *status quo ante* order issued by this Court on November 9, 2004 is hereby RECALLED.[39]

While respondent did file a motion for reconsideration of the March 31, 2005 Decision, the Court's recall of the SQAO was without any qualification; hence, its effect was immediate and non-contingent on any other occurrence. As such, respondent cannot successfully argue that the SQAO's recall was suspended during the pendency of his motion for reconsideration.

In fact, as petitioners correctly argue,[40] the Court's SQAO is akin to preliminary injunctions and/or TROs. As per the November 9, 2004 Resolution issuing the SQAO, the parties were required "to observe the STATUS QUO prevailing before the issuance of the assailed resolution and order of the Commission on Elections."[41] Therefore, as they carry the same import and effect, the recall of the SQAO subject of this case should be accorded the same treatment as that of the recall of said provisional reliefs.

The recall of the SQAO is effectively a dissolution of the said issuance. In *Defensor-Santiago v. Vasquez*,[42] the Court discussed the immediately executory nature of orders dissolving preliminary injunctions and/or TROs:

> [A]n order of dissolution of an injunction may be immediately effective, even though it is not final. A dismissal, discontinuance, or non suit of an action in which a restraining order or temporary injunction has been