

## FIRST DIVISION

[ G.R. No. 206423, July 01, 2015 ]

**LEONCIO ALANGDEO, ARTHUR VERCELES, AND DANNY VERGARA, PETITIONERS, VS. THE CITY MAYOR OF BAGUIO, HON. BRAULIO D. YARANON (TO BE SUBSTITUTED BY INCUMBENT CITY MAYOR, HON. MAURICIO DOMOGAN), JEOFREY MORTELA, HEAD DEMOLITION TEAM, CITY ENGINEER'S OFFICE, AND ERNESTO LARDIZABAL, RESPONDENTS.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>[1]</sup> are the Decision<sup>[2]</sup> dated June 29, 2012 and the Resolution<sup>[3]</sup> dated March 5, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 87439, which reversed the Decision<sup>[4]</sup> dated April 27, 2006 of the Regional Trial Court of Baguio City, Branch 60 (RTC) in Civil Case No. 6007-R granting the complaint for injunction filed by herein petitioners Leoncio Alangdeo, Arthur Verceles (Verceles), and Danny Vergara (collectively, petitioners).

#### The Facts

On November 13, 2003, respondent Ernesto Lardizabal (Ernesto) filed a complaint for demolition,<sup>[5]</sup> before the City Engineer's Office<sup>[6]</sup> of Baguio City (City Engineer's Office), questioning the ongoing construction of a residential structure and garage extension by petitioners on a parcel of land, situated at Barangay Atok Trail, Baguio City (subject property), allegedly owned by Mariano Pangloy and Ernesto's father, Juanito Lardizabal.<sup>[7]</sup> Upon investigation, the City Engineer's Office found out that the construction had **no building permit**. Consequently, the City Mayor issued, through the Secretary to the Mayor, **Demolition Order No. 05, series of 2005** (DO No. 05) directing the City Demolition Team to summarily demolish the said structures, to wit:<sup>[8]</sup>

WHEREFORE, the CITY DEMOLITION TEAM is hereby directed to **SUMMARILY DEMOLISH** the aforesaid structures of Atty. Leoncio Alangdeo, Arthur Verceles and/or Danny Vergara **in accordance with Section 3[,]** par. 2.5(a) of the implementing rules and regulations governing summary eviction jointly issued by the Department of Interior and Local Government (DILG) and the Housing and Urban Development Coordinating Council pursuant to **Section 44, [A]rticle XII of [Republic Act (RA) No. 7279<sup>[9]</sup>]**. (Emphases supplied)

Aggrieved, petitioners moved for a reconsideration of DO No. 05, but was denied by

the City Mayor. Thus, they were prompted to file a complaint for injunction and prohibition with the RTC, docketed as Civil Case No. 6007-R, seeking to enjoin the implementation of said order.<sup>[10]</sup>

In their complaint, petitioners applied for a temporary restraining order, which was granted by the RTC. Subsequently, the RTC issued a writ of preliminary injunction pending the final determination of the merits of the case.<sup>[11]</sup>

During trial, Verceles testified, among others, that he has a Tax Declaration and a pending application for Ancestral Land Claim over the subject property filed before the National Commission on Indigenous Peoples (NCIP), and that he has been paying taxes therefor and occupying the same since 1977.<sup>[12]</sup> He also testified that Ernesto had previously filed a case with the Office of the Department of Environment and Natural Resources (DENR)-Cordillera Administrative Region (CAR), questioning his possession thereof, as well as, seeking the cancellation of his tax declaration over the said property.<sup>[13]</sup> The DENR-CAR dismissed the case in his favor, but Ernesto appealed to the Office of the DENR Secretary. At the time the appeal was pending, Ernesto filed the complaint for demolition before the City Engineer's Office. Verceles further testified that Barangay Atok Trail is covered by Proclamation No. 414, series of 1957 (Proclamation 414), which declared the same as mineral reservation for Baguio City, for which reason he was unable to get a title over the subject property despite his possession thereof.<sup>[14]</sup>

Punong Barangay Stephen T. Aligo was also presented by petitioners as a witness. He testified that by Resolution No. 386, series of 1995, the City Council requested for the release of the vast area covered by Proclamation 414, for housing purposes to be awarded to the occupants of Barangay Atok Trail. Also, he narrated that in a census conducted in 2003, it was found that there were two hundred thirty (230) houses in Barangay Atok Trail and none of these houses had building permits.<sup>[15]</sup>

On the other hand, respondents' witnesses, Antonio O. Visperas, Robert Albas Awingan, and George Addawe, Jr., all testified that the structures of petitioners on the subject property were not covered by any building permit.<sup>[16]</sup> Additionally, Ernesto testified that the issue of possession over the said property was the subject of an appeal pending before the Office of the DENR Secretary.<sup>[17]</sup>

### **The RTC Ruling**

In a Decision<sup>[18]</sup> dated April 27, 2006, the RTC enjoined the City Government of Baguio and its agents from implementing DO No. 5 "until and after the resolution of all the cases/issues involving the subject property and/or area affected by the appropriate government agencies concerned." The injunction stemmed from its finding that Proclamation 414 declared the entire area of Barangay Atok Trail as a buffer zone for the mining industry, and, for that reason, all structures constructed thereon (and not only that of petitioners) were not covered by building permits. Thus, the RTC held that it would violate the equal protection clause if it would allow the demolition of petitioners' structures while leaving untouched the other structures in the area.<sup>[19]</sup>

Dissatisfied, respondents appealed<sup>[20]</sup> to the CA.

### **The CA Ruling**

In a Decision<sup>[21]</sup> dated June 29, 2012, the CA reversed the ruling of the RTC, finding that petitioners failed to show any right to be protected. It relied on the Decision<sup>[22]</sup> rendered on August 31, 2006 by then DENR Secretary Angelo Reyes in DENR Case No. 5625, which recognized and respected the ancestral and preferential rights of Mariano Pangloy and the Heirs of Juanito Lardizabal over the subject property pending the final determination by the NCIP of their ancestral claim.<sup>[23]</sup> Accordingly, the CA held that where the plaintiff – as petitioners in this case – failed to demonstrate that he has an existing right to be protected by injunction, the suit for injunction must be dismissed for lack of cause of action.<sup>[24]</sup>

Unperturbed, petitioners filed a motion for reconsideration, raising therein the Decision<sup>[25]</sup> of the NCIP Regional Hearing Office dated May 18, 2012, which ruled that between petitioners and Ernesto, the former have a better right to the issuance of ancestral land titles over the portions they are claiming to be their ancestral lands.<sup>[26]</sup> The CA, however, denied the motion in a Resolution<sup>[27]</sup> dated March 5, 2013, maintaining that petitioners have no right *in esse*. Thus, considering that petitioners have no building permit over the subject constructions, it ruled that the public respondents have the right to demolish the subject structures.<sup>[28]</sup>

Hence, this petition.

### **The Issues Before the Court**

The issues for resolution are: (a) whether the CA should have dismissed respondents' appeal as it involves pure questions of law and/or for lack of merit; and (b) whether the issuance of a writ of injunction is warranted.

### **The Court's Ruling**

The petition is meritorious.

#### **I.**

On the preliminary procedural issue, Rule 41 of the Rules of Court (Rules) provides for three (3) ways by which an appeal from the RTC's decision may be undertaken, depending on the nature of the attendant circumstances of the case, namely: (a) an ordinary appeal to the CA in cases decided by the RTC in the exercise of its original jurisdiction; (b) a petition for review to the CA in cases decided by the RTC in the exercise of its appellate jurisdiction; and (c) a petition for review on *certiorari* directly filed with the Court where only questions of law are raised or involved.

<sup>[29]</sup> The first mode of appeal under Rule 41 of the Rules is available on questions of fact or mixed questions of fact and of law. The second mode of appeal, governed by Rule 42 of the Rules, is brought to the CA on questions of fact, of law, or mixed questions of fact and of law. The third mode of appeal under Rule 45 of the Rules is filed with the Court only on questions of law.<sup>[30]</sup>

There is a “question of law” when the doubt or difference arises as to what the law is on a certain state of facts, and which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a “question of fact” when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct, is a question of law.<sup>[31]</sup>

In this case, the CA was called upon, not to examine the probative value of the evidence presented, but to determine whether the legal conclusions made based on the recorded evidence is correct. Essentially, the issue raised before the CA was whether the order for the summary demolition of petitioners’ structures authorized under the law, and in that relation, whether the RTC’s grant of the complaint for injunction based on the equal protection clause was proper. Clearly, with none of the factual circumstances contested, the appeal involved pure questions of law that should have been brought directly to the Court. Consequently, on a technical note, the CA should have dismissed respondents’ appeal for having been filed with the wrong tribunal pursuant to Section 2, Rule 50 of the Rules which reads:

**SEC. 2.** *Dismissal of improper appeal to the Court of Appeals.* – An appeal under Rule 41 taken from the Regional Trial Court to the Court of Appeals raising only questions of law shall be dismissed, issues purely of law not being reviewable by said court.

Be that as it may, a review of the substantive merits of this case would nevertheless warrant the grant of the present petition which seeks the reversal of the CA decision.

## **II.**

DO No. 5<sup>[32]</sup> states on its face that it was issued in accordance with Section 3, paragraph 2.5 (a) of the Implementing Rules and Regulations (IRR) Governing Summary Eviction (Summary Eviction IRR), to wit:

### **SECTION 3. Procedures and Guidelines**

x x x x

#### **2.0 Issuance of Summary Eviction Notice**

x x x x

2.5 In the Issuance of notice, the following shall be strictly observed:

- a. For on-going construction, no notice shall be served. Dismantling of the structures shall be immediately enforced by the LGU or the concerned agency to demolish.

To note, the Summary Eviction IRR was issued pursuant to Section 28, Article VII of RA 7279, which equally provides for the situations wherein eviction or demolition is allowed as crafted exceptions to the moratorium on eviction under Section 44, Article XII<sup>[33]</sup> of the same law.

Sec. 28. Eviction and Demolition. — Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:

(a) When persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks, and playgrounds;

(b) When government infrastructure projects with available funding are about to be implemented; or

(c) When there is a court order for eviction and demolition.

x x x x

This Department of the Interior and Local Government and the Housing and Urban Development Coordinating Council shall jointly promulgate the necessary rules and regulations to carry out the above provision.  
(Emphases supplied)

Section 2 of the Summary Eviction IRR provides that only **new squatter**<sup>[34]</sup> families whose structures were built after the effectivity of RA 7279, otherwise known as the "Urban Development and Housing Act of 1992," and squatter families identified by the local government unit (LGU) as professional squatters<sup>[35]</sup> or members of squatting syndicates shall be subject of summary eviction:

SECTION 2. **Coverage** – The following shall be subject for summary eviction:

1.0 **New squatter** families whose structures were built after the effectivity of RA7279; and

2.0 Squatter families identified by the LGU in cooperation with the Presidential Commission of the Urban Poor (PCUP), Philippine National Police (PNP) and accredited Urban Poor [O]rganization (UPO) as professional squatters or members of squatting syndicates as defined in the Act.

Under the Summary Eviction IRR, the term "**summary eviction**" has been defined as "the immediate dismantling of new illegal structures by the local government units or government agency authorized to [demolish] in coordination with the affected urban poor organizations without providing the structure owner(s) any benefits of the Urban Development and Housing Program."<sup>[36]</sup>