

## THIRD DIVISION

**[ G.R. No. 211356, September 29, 2014 ]**

**CRISOSTOMO B. AQUINO, PETITIONER, VS. MUNICIPALITY OF MALAY, AKLAN, REPRESENTED BY HON. MAYOR JOHN P. YAP, SANGGUNIANG BAYAN OF MALAY, AKLAN, REPRESENTED BY HON. EZEL FLORES, DANTE PASUGUIRON, ROWEN AGUIRRE, WILBEC GELITO, JUPITER GALLENERO, OFFICE OF THE MUNICIPAL ENGINEER, OFFICE OF THE MUNICIPAL TREASURER, BORACAY PNP CHIEF, BORACAY FOUNDATION, INC., REPRESENTED BY NENETTE GRAF, MUNICIPAL AUXILIARY POLICE, AND JOHN AND JANE DOES, RESPONDENTS.**

### DECISION

**VELASCO JR., J.:**

#### **Nature of the Case**

Before the Court is a Petition for Review on Certiorari challenging the Decision<sup>[1]</sup> and the Resolution of the Court of Appeals (CA) in CA-G.R. SP No. 120042 dated August 13, 2013 and February 3, 2014, respectively. The assailed rulings denied Crisostomo Aquino's Petition for Certiorari for not being the proper remedy to question the issuance and implementation of Executive Order No. 10, Series of 2011 (EO 10), ordering the demolition of his hotel establishment.

#### **The Facts**

Petitioner is the president and chief executive officer of Boracay Island West Cove Management Philippines, Inc. (Boracay West Cove). On January 7, 2010, the company applied for a zoning compliance with the municipal government of Malay, Aklan.<sup>[2]</sup> While the company was already operating a resort in the area, the application sought the issuance of a building permit covering the construction of a three-storey hotel over a parcel of land measuring 998 sqm. located in Sitio Diniwid, Barangay Balagab, Boracay Island, Malay, Aklan, which is covered by a Forest Land Use Agreement for Tourism Purposes (FLAgT) issued by the Department of Environment and Natural Resources (DENR) in favor of Boracay West Cove.

Through a Decision on Zoning dated January 20, 2010, the Municipal Zoning Administrator denied petitioner's application on the ground that the proposed construction site was within the "no build zone" demarcated in Municipal Ordinance 2000-131 (Ordinance).<sup>[3]</sup> As provided in the Ordinance:

SECTION 2. – Definition of Terms. As used in this Ordinance, the following words, terms and phrases shall mean as follows:

x x x x

(b) No Build Zone – the space twenty-five (25) meters from the edge of the mean high water mark measured inland;

x x x x

SECTION 3. – No building or structure of any kind whether temporary or permanent shall be allowed to be set up, erected or constructed on the beaches around the Island of Boracay and in its offshore waters. During the conduct of special activities or special events, the Sangguniang Bayan may, through a Resolution, authorize the Office of the Mayor to issue Special Permits for construction of temporary structures on the beach for the duration of the special activity as embodied in the Resolution.

In due time, petitioner appealed the denial action to the Office of the Mayor on February 1, 2010.

On May 13, 2010, petitioner followed up his appeal through a letter but no action was ever taken by the respondent mayor. On April 5, 2011, however, a Notice of Assessment was sent to petitioner asking for the settlement of Boracay West Cove's unpaid taxes and other liabilities under pain of a recommendation for closure in view of its continuous commercial operation since 2009 sans the necessary zoning clearance, building permit, and business and mayor's permit. In reply, petitioner expressed willingness to settle the company's obligations, but the municipal treasurer refused to accept the tendered payment. Meanwhile, petitioner continued with the construction, expansion, and operation of the resort hotel.

Subsequently, on March 28, 2011, a Cease and Desist Order was issued by the municipal government, enjoining the expansion of the resort, and on June 7, 2011, the Office of the Mayor of Malay, Aklan issued the assailed EO 10, ordering the closure and demolition of Boracay West Cove's hotel.

EO 10 was partially implemented on June 10, 2011. Thereafter, two more instances followed wherein respondents demolished the improvements introduced by Boracay West Cove, the most recent of which was made in February 2014.

Alleging that the order was issued and executed with grave abuse of discretion, petitioner filed a Petition for Certiorari with prayer for injunctive relief with the CA. He argued that judicial proceedings should first be conducted before the respondent mayor could order the demolition of the company's establishment; that Boracay West Cove was granted a FLAgT by the DENR, which bestowed the company the right to construct permanent improvements on the area in question; that since the area is a forestland, it is the DENR—and not the municipality of Malay, or any other local government unit for that matter—that has primary jurisdiction over the area, and that the Regional Executive Director of DENR-Region 6 had officially issued an opinion regarding the legal issues involved in the present case; that the Ordinance admits of exceptions; and lastly, that it is the mayor who should be blamed for not issuing the necessary clearances in the company's favor.

In rebuttal, respondents contended that the FLAgT does not excuse the company

from complying with the Ordinance and Presidential Decree No. 1096 (PD 1096), otherwise known as the National Building Code of the Philippines. Respondents also argued that the demolition needed no court order because the municipal mayor has the express power under the Local Government Code (LGC) to order the removal of illegally constructed buildings.

### **Ruling of the Court of Appeals**

In its assailed Decision dated August 13, 2013, the CA dismissed the petition solely on procedural ground, i.e., the special writ of certiorari can only be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions and since the issuance of EO 10 was done in the exercise of executive functions, and not of judicial or quasi-judicial functions, certiorari will not lie. Instead, the proper remedy for the petitioner, according to the CA, is to file a petition for declaratory relief with the Regional Trial Court.

Petitioner sought reconsideration but this was denied by the CA on February 3, 2014 through the challenged Resolution. Hence, the instant petition raising arguments on both procedure and substance.

### **The Issues**

Stripped to the essentials, the pivotal issues in the extant case are as follows:

**1. The propriety under the premises of the filing of a petition for certiorari instead of a petition for declaratory relief;**

- a. Whether or not declaratory relief is still available to petitioner;
- b. Whether or not the CA correctly ruled that the respondent mayor was performing neither a judicial nor quasi-judicial function when he ordered the closure and demolition of Boracay West Cove's hotel;

**2. Whether or not respondent mayor committed grave abuse of discretion when he issued EO 10;**

- a. Whether or not petitioner's right to due process was violated when the respondent mayor ordered the closure and demolition of Boracay West Cove's hotel without first conducting judicial proceedings;
- b. Whether or not the LGU's refusal to issue petitioner the necessary building permit and clearances was justified;
- c. Whether or not petitioner's rights under the FLAgT prevail over the municipal ordinance providing for a no-build zone; and
- d. Whether or not the DENR has primary jurisdiction over the controversy, not the LGU.

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

We deny the petition.

## **Certiorari, not declaratory relief, is the proper remedy**

### **a. Declaratory relief no longer viable**

Resolving first the procedural aspect of the case, We find merit in petitioner's contention that the special writ of certiorari, and not declaratory relief, is the proper remedy for assailing EO 10. As provided under Sec. 1, Rule 63 of the Rules of Court:

SECTION 1. Who may file petition. – Any person interested under a deed, will, contract or other written instrument, whose rights are affected by a statute, executive order or regulation, ordinance or any other governmental regulation may, **before breach or violation** thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. x x x (emphasis added)

An action for declaratory relief presupposes that there has been no actual breach of the instruments involved or of the rights arising thereunder. Since the purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, and not to settle issues arising from an alleged breach thereof, it may be entertained before the breach or violation of the statute, deed or contract to which it refers. A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.<sup>[4]</sup>

In the case at bar, the petition for declaratory relief became unavailable by EO 10's enforcement and implementation. The closure and demolition of the hotel rendered futile any possible guidelines that may be issued by the trial court for carrying out the directives in the challenged EO 10. Indubitably, the CA erred when it ruled that declaratory relief is the proper remedy given such a situation.

### **b. Petitioner correctly resorted to certiorari**

On the propriety of filing a petition for certiorari, Sec. 1, Rule 65 of the Rules of Court provides:

Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court,

alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. x x x

For certiorari to prosper, the petitioner must establish the concurrence of the following requisites, namely:

1. The writ is directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions;
2. Such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and
3. There is no appeal or any plain speedy, and adequate remedy in the ordinary course of law.<sup>[5]</sup>

Guilty of reiteration, the CA immediately dismissed the Petition for Certiorari upon determining that the first element is wanting—that respondent mayor was allegedly not exercising judicial or quasi-judicial functions when he issued EO 10.

We are not persuaded.

The CA fell into a trap when it ruled that a mayor, an officer from the executive department, exercises an executive function whenever he issues an Executive Order. This is tad too presumptive for it is the nature of the act to be performed, rather than of the office, board, or body which performs it, that determines whether or not a particular act is a discharge of judicial or quasi-judicial functions. The first requirement for certiorari is satisfied if the officers act judicially in making their decision, whatever may be their public character.<sup>[6]</sup>

It is not essential that the challenged proceedings should be strictly and technically judicial, in the sense in which that word is used when applied to courts of justice, but it is sufficient if they are quasi-judicial.<sup>[7]</sup> To contrast, a party is said to be exercising a *judicial function* where he has the power to determine what the law is and what legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties, whereas *quasi-judicial function* is “a term which applies to the actions, discretion, etc., of public administrative officers or bodies x x x required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature.”<sup>[8]</sup>

In the case at bench, the assailed EO 10 was issued upon the respondent mayor’s finding that Boracay West Cove’s construction, expansion, and operation of its hotel in Malay, Aklan is illegal. Such a finding of illegality required the respondent mayor’s exercise of quasi-judicial functions, against which the special writ of certiorari may lie. Apropos hereto is Our ruling in *City Engineer of Baguio v. Baniqued*:<sup>[9]</sup>