

EN BANC

[G.R. No. 161107, March 12, 2013]

HON. MA. LOURDES C. FERNANDO, IN HER CAPACITY AS CITY MAYOR OF MARIKINA CITY, JOSEPHINE C. EVANGELISTA, IN HER CAPACITY AS CHIEF, PERMIT DIVISION, OFFICE OF THE CITY ENGINEER, AND ALFONSO ESPIRITU, IN HIS CAPACITY AS CITY ENGINEER OF MARIKINA CITY, PETITIONERS, VS. ST. SCHOLASTICA'S COLLEGE AND ST. SCHOLASTICA'S ACADEMY-MARIKINA, INC., RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, which seeks to set aside the December 1, 2003 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 75691.

The Facts

Respondents St. Scholastica's College (SSC) and St. Scholastica's Academy-Marikina, Inc. (*SSA-Marikina*) are educational institutions organized under the laws of the Republic of the Philippines, with principal offices and business addresses at Leon Guinto Street, Malate, Manila, and at West Drive, Marikina Heights, Marikina City, respectively.^[2]

Respondent SSC is the owner of four (4) parcels of land measuring a total of 56,306.80 square meters, located in Marikina Heights and covered by Transfer Certificate Title (*TCT*) No. 91537. Located within the property are SSA-Marikina, the residence of the sisters of the Benedictine Order, the formation house of the novices, and the retirement house for the elderly sisters. The property is enclosed by a tall concrete perimeter fence built some thirty (30) years ago. Abutting the fence along the West Drive are buildings, facilities, and other improvements.^[3]

The petitioners are the officials of the City Government of Marikina. On September 30, 1994, the *Sangguniang Panlungsod* of Marikina City enacted Ordinance No. 192,^[4] entitled "*Regulating the Construction of Fences and Walls in the Municipality of Marikina.*" In 1995 and 1998, Ordinance Nos. 217^[5] and 200^[6] were enacted to amend Sections 7 and 5, respectively. Ordinance No. 192, as amended, is reproduced hereunder, as follows:

ORDINANCE No. 192
Series of 1994

ORDINANCE REGULATING THE CONSTRUCTION OF FENCES AND WALLS
IN THE MUNICIPALITY OF MARIKINA

WHEREAS, under Section 447.2 of Republic Act No. 7160 otherwise known as the Local Government Code of 1991 empowers the *Sangguniang Bayan* as the local legislative body of the municipality to "x x x Prescribe reasonable limits and restraints on the use of property within the jurisdiction of the municipality, x x x";

WHEREAS the effort of the municipality to accelerate its economic and physical development, coupled with urbanization and modernization, makes imperative the adoption of an ordinance which shall embody up-to-date and modern technical design in the construction of fences of residential, commercial and industrial buildings;

WHEREAS, Presidential Decree No. 1096, otherwise known as the National Building Code of the Philippines, does not adequately provide technical guidelines for the construction of fences, in terms of design, construction, and criteria;

WHEREAS, the adoption of such technical standards shall provide more efficient and effective enforcement of laws on public safety and security;

WHEREAS, it has occurred in not just a few occasions that high fences or walls did not actually discourage but, in fact, even protected burglars, robbers, and other lawless elements from the view of outsiders once they have gained ingress into these walls, hence, fences not necessarily providing security, but becomes itself a "security problem";

WHEREAS, to discourage, suppress or prevent the concealment of prohibited or unlawful acts earlier enumerated, and as guardian of the people of Marikina, the municipal government seeks to enact and implement rules and ordinances to protect and promote the health, safety and morals of its constituents;

WHEREAS, consistent too, with the "Clean and Green Program" of the government, lowering of fences and walls shall encourage people to plant more trees and ornamental plants in their yards, and when visible, such trees and ornamental plants are expected to create an aura of a clean, green and beautiful environment for Marikeños;

WHEREAS, high fences are unsightly that, in the past, people planted on sidewalks to "beautify" the façade of their residences but, however, become hazards and obstructions to pedestrians;

WHEREAS, high and solid walls as fences are considered "un- neighborly" preventing community members to easily communicate and socialize and deemed to create "boxed-in" mentality among the populace;

WHEREAS, to gather as wide-range of opinions and comments on this proposal, and as a requirement of the Local Government Code of 1991 (R.A. 7160), the *Sangguniang Bayan* of Marikina invited presidents or

officers of homeowners associations, and commercial and industrial establishments in Marikina to two public hearings held on July 28, 1994 and August 25, 1994;

WHEREAS, the rationale and mechanics of the proposed ordinance were fully presented to the attendees and no vehement objection was presented to the municipal government;

NOW, THEREFORE, BE IT ORDAINED BY THE SANGGUINANG BAYAN OF MARIKINA IN SESSION DULY ASSEMBLED:

Section 1. Coverage: This Ordinance regulates the construction of all fences, walls and gates on lots classified or used for residential, commercial, industrial, or special purposes.

Section 2. Definition of Terms:

- a. Front Yard – refers to the area of the lot fronting a street, alley or public thoroughfare.
- b. Back Yard – the part of the lot at the rear of the structure constructed therein.
- c. Open fence – type of fence which allows a view of “thru-see” of the inner yard and the improvements therein. (Examples: wrought iron, wooden lattice, cyclone wire)
- d. Front gate – refers to the gate which serves as a passage of persons or vehicles fronting a street, alley, or public thoroughfare.

Section 3. The standard height of fences or walls allowed under this ordinance are as follows:

- (1) Fences on the front yard – shall be no more than one (1) meter in height. Fences in excess of one (1) meter shall be of an open fence type, at least eighty percent (80%) see-thru; and**
- (2) Fences on the side and back yard – shall be in accordance with the provisions of P.D. 1096 otherwise known as the National Building Code.

Section 4. No fence of any kind shall be allowed in areas specifically reserved or classified as parks.

Section 5. In no case shall walls and fences be built within the five (5) meter parking area allowance located between the front monument line and the building line of commercial and industrial establishments and educational and religious institutions.^[7]

Section 6. Exemption.

- (1) The Ordinance does not cover perimeter walls of residential

subdivisions.

- (2) When public safety or public welfare requires, the *Sangguniang Bayan* may allow the construction and/or maintenance of walls higher than as prescribed herein and shall issue a special permit or exemption.

Section 7. Transitory Provision. Real property owners whose existing fences and walls do not conform to the specifications herein are allowed adequate period of time from the passage of this Ordinance within which to conform, as follows:

- (1) Residential houses – eight (8) years
- (2) Commercial establishments – five (5) years
- (3) Industrial establishments – three (3) years
- (4) Educational institutions – five (5) years^[8]
(public and privately owned)

Section 8. Penalty. Walls found not conforming to the provisions of this Ordinance shall be demolished by the municipal government at the expense of the owner of the lot or structure.

Section 9. The Municipal Engineering Office is tasked to strictly implement this ordinance, including the issuance of the necessary implementing guidelines, issuance of building and fencing permits, and demolition of non-conforming walls at the lapse of the grace period herein provided.

Section 10. Repealing Clause. All existing Ordinances and Resolutions, Rules and Regulations inconsistent with the foregoing provisions are hereby repealed, amended or modified.

Section 11. Separability Clause. If for any reason or reasons, local executive orders, rules and regulations or parts thereof in conflict with this Ordinance are hereby repealed and/or modified accordingly.

Section 12. Effectivity. This ordinance takes effect after publication.
APPROVED: September 30, 1994

(Emphases supplied)

On April 2, 2000, the City Government of Marikina sent a letter to the respondents ordering them to demolish and replace the fence of their Marikina property to make it 80% see-thru, and, at the same time, to move it back about six (6) meters to provide parking space for vehicles to park.^[9] On April 26, 2000, the respondents requested for an extension of time to comply with the directive.^[10] In response, the petitioners, through then City Mayor Bayani F. Fernando, insisted on the enforcement of the subject ordinance.

Not in conformity, the respondents filed a petition for prohibition with an application

for a writ of preliminary injunction and temporary restraining order before the Regional Trial Court, Marikina, Branch 273 (RTC), docketed as SCA Case No. 2000-381-MK.^[11]

The respondents argued that the petitioners were acting in excess of jurisdiction in enforcing Ordinance No. 192, asserting that such contravenes Section 1, Article III of the 1987 Constitution. That demolishing their fence and constructing it six (6) meters back would result in the loss of at least 1,808.34 square meters, worth about P9,041,700.00, along West Drive, and at least 1,954.02 square meters, worth roughly P9,770,100.00, along East Drive. It would also result in the destruction of the garbage house, covered walk, electric house, storage house, comfort rooms, guards' room, guards' post, waiting area for visitors, waiting area for students, Blessed Virgin Shrine, P.E. area, and the multi-purpose hall, resulting in the permanent loss of their beneficial use. The respondents, thus, asserted that the implementation of the ordinance on their property would be tantamount to an appropriation of property without due process of law; and that the petitioners could only appropriate a portion of their property through eminent domain. They also pointed out that the goal of the provisions to deter lawless elements and criminality did not exist as the solid concrete walls of the school had served as sufficient protection for many years.^[12]

The petitioners, on the other hand, countered that the ordinance was a valid exercise of police power, by virtue of which, they could restrain property rights for the protection of public safety, health, morals, or the promotion of public convenience and general prosperity.^[13]

On June 30, 2000, the RTC issued a writ of preliminary injunction, enjoining the petitioners from implementing the demolition of the fence at SSC's Marikina property.^[14]

Ruling of the RTC

On the merits, the RTC rendered a Decision,^[15] dated October 2, 2002, granting the petition and ordering the issuance of a writ of prohibition commanding the petitioners to permanently desist from enforcing or implementing Ordinance No. 192 on the respondents' property.

The RTC agreed with the respondents that the order of the petitioners to demolish the fence at the SSC property in Marikina and to move it back six (6) meters would amount to an appropriation of property which could only be done through the exercise of eminent domain. It held that the petitioners could not take the respondents' property under the guise of police power to evade the payment of just compensation.

It did not give weight to the petitioners' contention that the parking space was for the benefit of the students and patrons of SSA-Marikina, considering that the respondents were already providing for sufficient parking in compliance with the standards under Rule XIX of the National Building Code.

It further found that the 80% see-thru fence requirement could run counter to the respondents' right to privacy, considering that the property also served as a