

## THIRD DIVISION

**[ G.R. No. 165333, February 09, 2010 ]**

**REPUBLIC OF THE PHILIPPINES (DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES), PETITIONER, VS. TECHNOLOGICAL ADVOCATES FOR AGRO-FOREST PROGRAMS ASSOCIATION, INC. (TAFPA, INC.), RESPONDENT.**

### DECISION

**PERALTA, J.:**

This is a Petition for Review on Certiorari assailing the Decision<sup>[1]</sup> dated September 9, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 76176 denying the petition for Annulment of Judgment filed by the Republic of the Philippines, Department of Environment and Natural Resources (DENR).

The factual and procedural antecedents are as follows:

On November 27, 1995, respondent Technological Advocates for Agro-Forest Programs Association, Inc. (TAFPA) and DENR, Regional Office (RO) No. IX, represented by its then Regional Executive Director (RED), Cipriano B. Paet, entered into a contract<sup>[2]</sup> for community organizing activities, social investigation, and information education campaign at the San Isidro Tinago Reforestation Sub-Project in Sergio Osmeña, Sr., Zamboanga del Norte.

Respondent later submitted to the Office of the RED its Accomplishment Reports and Requests for Billing on July 8, 1998 for accomplishments covering the 4<sup>th</sup>, 5<sup>th</sup>, and 6<sup>th</sup> Quarters and on June 7, 1999 for the 7<sup>th</sup> Quarter.<sup>[3]</sup>

After evaluation and validation by the Composite Inspection Committee (CIC) of the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup> Accomplishment Reports, the CIC recommended the payment of the sum of P802,350.64 to respondent.<sup>[4]</sup>

However, in a letter<sup>[5]</sup> dated September 8, 1999, RED Antonio M. Mendoza informed respondent that by reason of the latter's delay in the submission of its reports, it owed the DENR, Region 9, Zamboanga City, the amount of P1,192,611.00 as penalty for delay deductible from its collectibles of P802,350.64. Thus, respondent was still liable to the DENR in the sum of P390,260.36.

Respondent sought reconsideration of the position of RED Mendoza regarding its claims in a letter<sup>[6]</sup> dated October 9, 1999. The letter was later referred to the Legal Division, DENR, Region 9, Zamboanga City, for legal interpretation of the provisions of the contract entered into by the parties.

On November 22, 1999, Atty. Orlando V. Kong issued a Memorandum<sup>[7]</sup> clarifying

that the "delay" contemplated in the contract that would warrant the imposition of the stipulated penalty referred to the "failure to undertake the primary community organizing activities such as community planning workshops, assemblies, meetings/seminars, social development, and technical trainings, consultations with community members and leaders and not to the non-submission of reports."

However, instead of paying respondent's claims, the matter was referred to the Program Director, National Forestation Development Office (NFDO), DENR, seeking its position on whether to impose penalty on the billings of respondent. On December 1, 1999, the Program Director issued a memorandum<sup>[8]</sup> stating that the regional office was correct in its position to impose the contract's penalty clause. He further stated that the only recourse of the respondent would be to petition the proper court for the equitable reduction of the penalty imposed by the contract. RED Mendoza forthwith informed respondent of the Program Director's position.

On December 15, 1999, respondent filed with the RTC, Zamboanga City, a special civil action for Mandamus with Prayer for Damages, docketed as SPL. CIVIL ACTION No. 459, praying that after notice and hearing, a writ be issued commanding the RED of the DENR to pay respondent P802,350.64, representing the latter's unpaid claims, P50,000.00 as moral damages, P25,000.00 by way of attorney's fees and legal interest on the principal sum demanded. The RTC subsequently treated the case as one for specific performance rather than an action for mandamus, since the allegations in the complaint clearly reflected that respondent's cause of action was based on a contract.

Meanwhile, on January 18, 2000, Atty. Vidzfar A. Julie (Atty. Julie), entered his appearance as counsel for DENR.<sup>[9]</sup>

After the DENR filed its answer, the case was set for pre-trial. Respondent then filed a motion for judgment on the pleadings. The DENR through counsel, was furnished a copy of the motion, but filed no opposition or comment.

On June 8, 2000, the Office of the Solicitor General (OSG) deputized Atty. Julie as special counsel to assist the Solicitor General in the subject case. Atty. Julie was further directed to advise the OSG from time to time of the progress of the case and furnish the said Office with all copies of orders, pleadings, and motions.<sup>[10]</sup>

On December 1, 2000, the RTC issued an Order granting the motion for judgment on the pleadings. The DENR was furnished a copy of the order, but it did not seek reconsideration thereof.<sup>[11]</sup>

On March 16, 2001, the RTC rendered a Decision<sup>[12]</sup> in favor of the respondent and against the petitioner. The dispositive portion of the which reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of petitioner TAFPA Inc., represented by its president Danilo A. delos Santos against the respondent DENR Regional Office No. IX, Zamboanga City represented by its Regional Executive Director, ordering the latter to pay the former, as follows:

- (1) Unpaid claim under the contract in the amount of P802,350.64 plus legal interest on the principal sum due from the time of the billing for the accomplishments under the contract on June 7, 1999 up to the time the said sum is fully paid;
- (2) Attorney's fees in the amount of P20,000.00; and
- (3) Costs of suit.

The claim for moral damages is hereby dismissed for lack of evidence.

SO ORDERED.<sup>[13]</sup>

In ruling in favor of the respondent, the RTC opined that the language of the contract entered into by the parties was clear that the penalty clause applied only to delay in the full completion of the contracted services, and not to non-submission or delayed submission of the corresponding report. The court also held that it was incumbent upon petitioner to comply with its obligation in good faith by paying what was due the respondent.<sup>[14]</sup>

On May 22, 2001, petitioner, through its deputized counsel, filed a Motion for Reconsideration,<sup>[15]</sup> but it was denied on September 18, 2001.<sup>[16]</sup>

On February 19, 2002, the RTC made an Entry of Final Judgment<sup>[17]</sup> stating, among other things, that the decision dated March 16, 2001 had, on January 31, 2002, become final and executory, there being no appeal filed by any party before any appellate court. Respondent thus filed an urgent motion for execution with the RTC which was granted on March 14, 2002.<sup>[18]</sup>

Subsequently, the OSG filed a Manifestation and Motion<sup>[19]</sup> asking the RTC to set aside the March 16, 2001 Decision on the ground of lack of due process. On May 20, 2002, the RTC issued an Order<sup>[20]</sup> denying the motion.

Undeterred, the OSG filed a Notice of Appeal<sup>[21]</sup> dated July 23, 2002, before the RTC raising the following issues: (1) whether or not plaintiff has a cause of action against defendant; and (2) whether or not plaintiff is entitled to be paid his money claim against defendant.<sup>[22]</sup>

On December 27, 2002, the RTC issued an Order<sup>[23]</sup> disapproving the motion, the dispositive portion of which reads:

WHEREFORE, premises considered, the Notice of Appeal is hereby DISAPPROVED. Likewise, the Motion to Set Aside Writ of Execution is hereby DENIED.

Respondent incumbent Regional Executive Director of the DENR, R-9, Zamboanga City is hereby ordered to request from the National Treasury for the release of the subject cash allocation within thirty (30) days from receipt hereof so that the respondent's obligation in favor of petitioner can be paid as decreed on the Decision of May 16, 2001.

SO ORDERED.

The RTC ratiocinated that both the decision dated March 16, 2001 and May 20, 2002 order had already become final and executory. There is no provision in the Rules of Court which allows the filing of a pleading for the dismissal of the case after judgment has become final and executory and for which a writ of execution has been issued. The court added that the grounds invoked and discussed for the dismissal of the case were neither related to the pending incidents nor were previously raised before the court. Instead of addressing the issues, petitioner sought the dismissal of the case on the ground of lack of cause of action and failure to exhaust administrative remedies.<sup>[24]</sup>

Aggrieved, petitioner sought recourse before the CA *via* a petition for Annulment of Judgment<sup>[25]</sup> under Rule 47 of the Rules of Court, seeking the annulment of the decision of the RTC dated March 16, 2001, based on the following grounds: (1) That the action lies within the jurisdiction of the [Commission on Audit] COA and not before the courts; (2) That private respondent did not exhaust administrative remedies against petitioner, hence, no cause of action against petitioner; and (3) Respondent is not entitled to be paid its money claim against petitioner.<sup>[26]</sup>

On September 9, 2004, the CA rendered a Decision<sup>[27]</sup> denying the petition. The decretal portion of the which reads as follows:

**WHEREFORE**, the instant petition is hereby **DENIED** due course for lack of merit and assailed decision of the lower court is hereby **AFFIRMED**.  
No costs.

SO ORDERED.<sup>[28]</sup>

In denying the petition, the CA opined that the RTC acquired jurisdiction over respondent's cause of action. The CA added that the rule on due process was not violated as petitioner was given all the opportunity to participate in the proceedings before the RTC, which it in fact did, and was duly notified of all court processes, orders, and decision. As for petitioner's claim of non-exhaustion of administrative remedies, the CA concluded that the DENR was estopped from raising the defense, considering that when the DENR denied respondent's claim, it informed the latter that its only recourse was to petition the proper court for it to equitably reduce the penalty based on the contract. The CA also affirmed the RTC's conclusion that prior resort to the COA is directed only when the money claim is against government funds that have not yet been appropriated by law.

Hence, the petition assigning the following errors:

counsel is notice to the OSG.

## II

the Court of Appeals erred on a question of law in affirming the denial of petitioner's right to due process by upholding the trial court's order for the release of funds in favor of respondent.

## III

the Court of Appeals erred on a question of law in ruling against petitioner which was not even a party to the case for mandamus filed by respondent before the trial court.

Petitioner argues that the CA erred in dismissing the petition for annulment of judgment on the ground that notice to the deputized counsel was notice to the OSG. Petitioner maintains that the lawyer deputized and designated as "special attorney-OSG" is a mere representative of the OSG, and the latter retains supervision and control over the deputized counsel. The OSG continues to be the principal counsel and, as such, the Solicitor General is the party entitled to be furnished copies of the orders, notices, and decisions. The deputized attorney has no legal authority to decide whether or not an appeal should be made. As a consequence, copies of orders and decisions served on the deputized counsel, acting as agent or representative of the Solicitor General, are not binding until they are actually received by the latter.

The petition is devoid of merit.

An action to annul a final judgment is an extraordinary remedy, which is not to be granted indiscriminately by the court. It is a recourse equitable in character and allowed only in exceptional cases. The reason for the restriction is to prevent this extraordinary action from being used by a losing party to make a complete farce of a duly promulgated decision that has long become final and executory.<sup>[29]</sup>

Under Section 2, Rule 47 of the Rules of Civil Procedure, the only grounds for annulment of judgment are extrinsic fraud and lack of jurisdiction. Lack of jurisdiction as a ground for annulment of judgment refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the claim.<sup>[30]</sup> It is absence of, or no, jurisdiction; that is, the court should not have taken cognizance of the petition because the law does not vest it with jurisdiction over the subject matter.

It should be stressed that in a petition for annulment of judgment based on lack of jurisdiction, petitioner must show not merely an abuse of jurisdictional discretion, but an absolute lack of jurisdiction.<sup>[31]</sup> In the present case, the CA has put to rest the issue of whether the RTC had jurisdiction over respondent's cause of action. The CA was correct when it concluded that:

In the present case, the action *a quo* is one for mandamus and, under Section 21 of Batas Pambansa Bilang 129, as amended, the Regional Trial