

SECOND DIVISION

[A.M. No. P-07-2322, April 23, 2010]

DALMACIO Z. TOMBOC, COMPLAINANT, VS. SHERIFFS LIBORIO M. VELASCO, JR., MEDAR T. PADAO, AND STEPHEN R. BENGUA, ALL OF THE REGIONAL TRIAL COURT, DIPOLOG CITY, RESPONDENTS.

DECISION

CARPIO, J.:

The Case

Before the Court is an administrative complaint for abuse of authority filed by Dalmacio Z. Tomboc (complainant) against Sheriffs Liborio M. Velasco, Jr., (Velasco), Medar T. Padao (Padao), and Stephen R. Bengua (Bengua)^[1] of the Regional Trial Court of Dipolog City.

The Antecedent Facts

Sometime in the last week of May or early part of June 2003, Velasco went to Barangay Silano, Piñan, Zamboanga del Norte to serve a writ of demolition in Spl. Civil Case No. 645. Complainant resides in the place, where he also has his piggery and poultry businesses. The subject property of the writ covered Lot Nos. 80-A and 81-A. Complainant informed Velasco that his house was constructed on Lot No. 81-B which he acquired from Erlinda Naranjo by *pacto de retro* sale. Velasco told complainant that he would bring a surveyor at the time of the demolition proceedings.

On 8 July 2003, complainant received a notice of demolition, signed by Velasco, from the Provincial Sheriff. However, due to lack of time, complainant was not able to take any legal action on the matter.

On 10 July 2003, Velasco and his companions started the demolition of Leonardo Naranjo's house. The following day, Velasco and his companions demolished complainant's house, despite complainant's pleas and insistence that his house was erected on Lot No. 81-B which was not covered by the writ of demolition.

Respondents, in their joint comment, alleged that the complaint resulted from the implementation of the writ of demolition issued by the Municipal Trial Court of Piñon, La Libertad, Zamboanga del Norte in Spl. Civil Action No. P-645. They alleged that the case was decided on 5 August 1995 while complainant came into the picture only sometime in 1999. Respondents further alleged that complainant's allegation that his house erected on Lot No. 81-B should not have been demolished had no basis because Lot No. 81-B was within the 9.4607 hectares of land registered in the name of Rodolfo Galleposo.

In its 1 December 2004 Resolution, this Court assigned the case to Executive Judge Soledad A. Acaylar (Judge Acaylar) of the Regional Trial Court of Dipolog City, Branch 7, for investigation, report and recommendation. However, Judge Acaylar requested to be relieved as investigating judge because Padao was an employee in her sala. The case was assigned to Judge Porferio E. Mah (Judge Mah).

The Findings of the of the Investigating Judge

During the investigation, Velasco testified that while Padao and Bengua were present during the demolition, they did not participate in the demolition of complainant's house because the writ of demolition was assigned to him.

In his Report and Recommendation^[2] dated 25 April 2006, Judge Mah noted that the writ of demolition covered only houses or structures constructed on Lot Nos. 80-A and 81-A. Judge Mah found that complainant's house was constructed on Lot No. 81-B, as testified to by Geodetic Engineer Willjado Jimeno. Judge Mah stated that Velasco should have been more cautious in the performance of his duties, and he should have required the prevailing parties to conduct a relocation survey of Lot Nos. 80-A and 81-A when complainant argued that his house was built on Lot No. 81-B.

Judge Mah recommended the dismissal of the complaint against Padao and Bengua. Judge Mah further recommended that Velasco be required to restore complainant's house to its previous condition prior to the demolition, and if it could not be done, to pay complainant its equivalent value. Judge Mah further recommended that Velasco be imposed a fine of P3,000 with a warning that a repetition of the same or similar act would be dealt with more severely.

The Findings of the OCA

In its 13 September 2006 Resolution, this Court referred Judge Mah's Report and Recommendation to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.

In its Memorandum dated 22 January 2007, the OCA found Velasco guilty of inefficiency and incompetence in the performance of official duties and recommended that he be meted the penalty of suspension for six months with a stern warning that a repetition of the same or similar act in the future will be dealt with more severely. As regards the damages suffered by complainant, the OCA recommended that he be informed that an appropriate remedy is available to him.

The Ruling of this Court

The findings and recommendation of the OCA are well-taken, except for the recommended penalty.

It is clear that Velasco failed to exercise due diligence in the performance of his duties. The writ of demolition covered only Lot Nos. 80-A and 81-A. He was informed beforehand that complainant's house was constructed on Lot No. 81-B. He relied on the representative of the plaintiff in Spl. Civil Case No. 645 who told him