

SECOND DIVISION

[G.R. No. 174129, July 05, 2010]

**HONESTO V. FERRER, JR., AND ROMEO E. ESPERA, PETITIONERS,
VS. MAYOR SULPICIO S. ROCO, JR., IN HIS CAPACITY AS MAYOR
OF NAGA CITY, SANGGUNIANG PANGLUNGSOD OF THE CITY OF
NAGA, AND PEÑAFRANCIA MEMORIAL PARK CORPORATION
RESPONDENTS.**

DECISION

MENDOZA, J.:

At bench is a petition for review under Rule 45 of the Rules of Court. filed by petitioners Honesto V. Ferrer, Jr. and Romeo E. Espera against respondents Mayor Sulpicio S. Roco, Jr., in his capacity as mayor of Naga City; the Sangguniang Panglungsod of the City of Naga; and Peñafrancia Memorial Park Corporation or "PMPC" (formerly ARE Square Realty Development Corporation).

The petition challenges **(1)** the April 21, 2006 Decision of the Court of Appeals^[1] affirming *in toto* the April 17, 2001 Order^[2] of the Regional Trial Court, Naga City, Branch 24; and **(2)** its August 9, 2006 Resolution^[3] denying the Motion for Reconsideration filed by the petitioners.

THE RELEVANT ANTECEDENTS:

Wenceslao D. San Andres, Jose A. Ocampo, Crisensana M. Vargas, Honesto V. Ferrer, Jr., Alfonso N. Peralta, Otilia C. Sierra, Jovito A. delos Santos, William Tan, Felipe Sese, and Romeo E. Espera filed a Petition for Declaratory Relief and/or Injunction with prayer for Temporary Restraining Order (TRO)^[4] questioning Resolution No. 2000-263,^[5] Resolution No. 2000-354^[6] and Ordinance No. 2000-059^[7] issued by the respondents, Mayor Sulpicio S. Roco, Jr. and the members of the Sangguniang Panglungsod of Naga City. The said resolutions and ordinance read:

RESOLUTION NO. 2000-263

WHEREAS, received by the Sanggunian for appropriate action was the application of Mr. Robert L. Obiedo of ARE Square Realty Development Corporation for Preliminary Approval for Locational Clearance (PALC) for a First Class Memorial Park located at Barangay Balatas, City of Naga;

WHEREAS, the City Planning & Development Office evaluated and reviewed the documents submitted by Mr. Robert L. Obiedo for the purpose and found that the substantial requirements have been complied

with;

x x x

x x x

x x x

BE IT RESOLVED, as it is hereby resolved, to approve the application of Mr. Robert L. Obiedo of ARE Square Realty Development Corporation for Preliminary Approval for Locational Clearance (PALC) for a First Class Memorial Park located at Barangay Balatas, City of Naga.

RESOLUTION NO. 2000-354

WHEREAS, received by the Sangguniang Panglungsod for consideration was the letter dated September 4, 2000 of Mr. Robert L. Obiedo through his official representative Mrs. Alice C. Enojado of the ARE Square Realty Development Corporation applying for a Development Permit (DP) for their proposed Eternal Gardens Memorial Park with a total area of 60, 781 sq. m. located at Barangay Balatas, this city;

WHEREAS, in the Technical Evaluation Report dated October 2, 2000, the City Planning & Development Officer manifested that after evaluation and review of the submitted documents they found that the applicant has substantially complied with the requirements;

x x x

x x x

x x x

BE IT RESOLVED, as it is hereby resolved, to approve the application for Development Permit (DP) of Mr. Robert L. Obiedo of the ARE Square Realty Development Corporation to develop the Eternal Gardens Memorial Park located at Barangay Balatas, this city, subject to the following conditions and compliance of all existing laws, ordinances, rules and regulations and further favorably **endorsing** the same to the Housing Land Use and Regulatory Board (HLURB) for appropriate action, to wit:

x x x

x x x

x x x [Emphasis supplied]

ORDINANCE NO. 2000-059

Be it ordained by the Sangguniang Panglungsod of the City of Naga, that:

SECTION 1. - Ordinance No. 401, s. 1972, entitled: "An Ordinance Regulating the Establishment, Maintenance and Operation of Private Memorial Park-Type Cemetery or Burial Ground within the Jurisdiction of Naga City, and Providing Penalties for Violation Thereof"; specifically sub-paragraph (2) of paragraph (c) under Section 3 and sub-paragraph (a) under Section 5 thereof, on the minimum area of the proposed cemetery and Mayor's Permit and License Fees, respectively, is hereby amended, now to read follows:

SECTION 3. - the operation and maintenance of the private memorial park-type cemetery established pursuant to this

Ordinance shall be subject to the provisions of the cemetery law and/or other pertinent laws as well as rules and regulations promulgated or as may be promulgated by the Municipal Board, subject further to the following conditions:

x x x x x x x x x

(c) No application for the establishment of a private cemetery shall be considered:

x x x x x x x x x

(2) if the proposed private cemetery site is less than five (5) hectares;

x x x x x x x x x.'

Respondents filed a Motion to Dismiss^[8] for lack of jurisdiction. Finding the motion to be well-taken, the RTC dismissed the petition in an order dated April 17, 2001.^[9] The RTC found that the prayer of petitioners was premature as the questioned resolutions and ordinance were merely promulgated to pave the way for the endorsement of the application of the private respondent to the HLURB. It recognized that the HLURB is the entity which will decide whether the application of the private respondent will be granted or not.

Apparently not in conformity with the order of dismissal, the petitioners appealed to the Court of Appeals premised on the following errors ---

"THE TRIAL COURT ERRED IN HOLDING THAT HLURB HAS JURISDICTION OVER THE CASE.

THE TRIAL COURT ERRED IN NOT GRANTING APPELLANTS' PRAYER FOR TRO AND OR WRIT OF PRELIMINARY INJUNCTION."^[10]

As earlier stated, the Court of Appeals affirmed *in toto* the April 17, 2001 Order of the RTC.^[11] Pertinently, the Court of Appeals wrote:

"Indeed, the doctrine of administrative remedies requires that resort be first made to the administrative authorities in cases falling under their jurisdiction to allow them to carry out their functions and discharge their liabilities within the specialized areas of their competence. This is because the administrative agency concerned is in the best position to correct any previous error committed in its forum. Clearly, the filing of the petition for declaratory relief with the trial court had no basis, as there can be no issue ripe for judicial determination when the matter is within the primary jurisdiction of an administrative agency, the HLURB.

Consequently, inasmuch as the filing of the petition below was