

SECOND DIVISION

[G.R. No. 141010, February 07, 2007]

UNITED BF HOMEOWNERS' ASSOCIATIONS, INC., ROMEO T. VILLAMEJOR, RAUL S. LANUEVO, ROBERTO ARNALDO, FLORENTINO CONCEPCION, BF NORTHWEST HOMEOWNERS' ASSOCIATION, INC., KK HOMEOWNERS' ASSOCIATION, INC., AND BF (CRAB) HOMEOWNERS' ASSOCIATION, INC., PETITIONERS, VS. THE (MUNICIPAL) CITY MAYOR, THE (MUNICIPAL) CITY PLANNING AND DEVELOPMENT THE (MUNICIPAL) CITY ENGINEER AND/OR BUILDING OFFICIAL, COORDINATING OFFICER OR ZONING ADMINISTRATOR, THE CHIEF OF THE PERMITS AND LICENSES DIVISION, THE SANGGUNIAN (BAYAN) PANGLUNGSOD, AND BARANGAY BF HOMES, ALL OF PARAÑAQUE CITY, METRO MANILA RESPONDENTS, EL GRANDE AGUIRRE COMMERCE AND TRADE ASSOCIATION (EL ACTO), RESPONDENT-INTERVENOR.

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review^[1] of the 28 June 1999 Decision^[2] and the 16 November 1999 Resolution^[3] of the Court of Appeals in CA-G.R. SP No. 46624. The Court of Appeals held that Municipal Ordinance No. 97-08 is a valid exercise of police power by the Municipality of Parañaque.^[4]

The Facts

BF Homes Parañaque Subdivision (BF Homes Parañaque), with a land area straddling the cities of Parañaque, Las Piñas, and Muntinlupa, is the largest subdivision in the country.

On 11 November 1997, the Municipal Council of Parañaque enacted Municipal Ordinance No. 97-08^[5] entitled, "An Ordinance Prescribing the Comprehensive Land Use Plan & Zoning of the Municipality of Parañaque Pursuant to the Local Government Code of 1991 and Other Pertinent Laws." Sections 11.5 and 11.6 of Municipal Ordinance No. 97-08, reclassifying El Grande and Aguirre Avenues in BF Homes Parañaque from residential to commercial areas, read:

11.5 C-1 LOW INTENSITY COMMERCIAL ZONES

X X X X

BARANGAY BF HOMES

Lot deep both side[s] along Aguirre Avenue from Governor A. Santos Street eastward to Gng. Elsie Gatches Street

Lot deep both side[s] along El Grande Avenue from Lopez Avenue gate southward to corner Aguirre Avenue

x x x x

11.6 C-2 MAJOR COMMERCIAL ZONES

x x x x

BARANGAY BF HOMES

Lot deep both side[s] along Aguirre Avenue from Dallas to El Grande Avenue

Lot deep both side[s] along Aguirre Avenue from El Grande Avenue to Gov. A. Santos Street

BF Parañaque Commercial Plaza

Area bounded on the

- North - Pres. Quezon Street
- South - A. Aguirre Avenue
- East - President's Avenue
- West - MMP, Creek along BF Homeowner's Association clubhouse

Lot deep east side along President's Avenue from Mac Donald southward to M. Rufino Street

Area bounded on the

- North - A. Aguirre Avenue
- South - A. Soriano Sr. & M. Rufino Street
- East - President's Avenue
- West - Gng. Elsie Ga[t]ches Street

x x x x^[6]

On 27 January 1998, the United BF Homeowners' Associations, Inc. (UBFHAI),^[7] several homeowners' associations, and residents of BF Homes Parañaque (collectively petitioners) filed with the Court of Appeals a petition for prohibition with an application for temporary restraining order and preliminary injunction. Petitioners questioned the constitutionality of Sections 11.5, 11.6, 15,^[8] 17,^[9] and 19.6^[10] of Municipal Ordinance No. 97-08.

Petitioners alleged that the reclassification of certain portions of BF Homes Parañaque from residential to commercial zone is unconstitutional because it

amounts to impairment of the contracts between the developer of BF Homes Parañaque and the lot buyers. Petitioners cited the annotation on the lot buyers' titles which provides that "the property shall be used for residential purposes only and for no other purpose."

On the other hand, public respondents alleged that the passage of Municipal Ordinance No. 97-08 is a valid exercise of police power by the Municipal Council of Parañaque and that such ordinance can nullify or supersede the contractual obligations entered into by the petitioners and the developer.

Meanwhile, El Grande Aguirre Commerce and Trade Organization (EL ACTO), a non-stock, non-profit corporation, intervened as respondent. EL ACTO claimed that its members are lot owners, residents, and operators of commercial establishments along El Grande and Aguirre Avenues in BF Homes Parañaque, who will be affected if Municipal Ordinance No. 97-08 is declared unconstitutional. EL ACTO asserted that Municipal Ordinance No. 97-08 is a valid exercise of police power and that petitioners are guilty of estoppel since petitioners endorsed the opening of many of these commercial establishments in BF Homes Parañaque. EL ACTO further alleged that the instant petition should have been initially filed with the Regional Trial Court in accordance with the principle of hierarchy of courts.

On 28 June 1999, the Court of Appeals dismissed the petition. Petitioners moved for reconsideration, which the Court of Appeals denied.

Hence, this petition.

The Ruling of the Court of Appeals

Citing the General Welfare Clause^[11] of Republic Act No. 7160 (RA 7160), the Court of Appeals held that the enactment of Municipal Ordinance No. 97-08 which, among others, reclassified El Grande and Aguirre Avenues in BF Homes Parañaque as commercial zones, was a valid exercise of police power by the Municipality of Parañaque.

The Court of Appeals took judicial notice of the fact that El Grande and Aguirre Avenues are main streets of BF Homes Parañaque which have long been commercialized, thus:

The declaration of El Grande and Aguirre Avenues as commercial zones through Municipal Ordinance No. 97-08 is an exercise of police power.

Obviously, because of the rapid and tremendous increase in population, the needs of the homeowners in the BF Parañaque Subdivision grew. The commercial zones in the area proved inadequate to service the needs of its residents. There was therefore a need to open more commercial districts. In fact, records show that several homeowners along El Grande and Aguirre Avenues converted their residences into business establishments. El Acto's members are among them.

Aside from the increasing number of commercial establishments therein, judicial notice may be taken of the fact that El Grande and Aguirre Avenues are main thoroughfares of BF Homes Parañaque which have long

been commercialized. The local government therefore responded to these changes in the community by enacting Ordinance No. 97-08 x x x.^[12]

The Issues

Petitioners raise the following issues:

1. Whether R.A. 7160, the Local Government Code of 1991 has repealed PD 957, the Subdivision and Condominium Buyer's Protective Decree;
2. Whether the power of local government units to enact comprehensive zoning ordinances has legal limitations;
3. Whether Municipal Ordinance No. 97-08 is a legitimate exercise of police power;
4. Whether Municipal Ordinance No. 97-08 is constitutional considering that it impairs a contractual obligation annotated in homeowners' titles and violates the doctrine of separation of powers;
5. Whether Municipal Ordinance No. 97-08 is enforceable pending review by the MMDA, the Metro Manila Mayor's Council and the HLURB.^[13]

The resolution of these issues turns on the validity of Municipal Ordinance No. 97-08.

The Ruling of the Court

The petition is without merit.

Power to Enact Zoning Ordinances

The Municipal Council of Parañaque enacted Municipal Ordinance No. 97-08 pursuant to the provisions of RA 7160 and Executive Order No. 72.^[14]

Under Section 447 of RA 7160, the Sangguniang Bayan or the Municipal Council, as the legislative body of the municipality, has the power to enact ordinances for the general welfare of the municipality and its inhabitants.

Among the functions of the Sangguniang Bayan enumerated under Section 447 of RA 7160 are:

- (2) Generate and maximize the use of resources and revenues for the development plans, program objectives and priorities of the municipality as provided for under Section 18 of this Code with particular attention to agro-industrial development and countryside growth and progress, and relative thereto, shall:

x x x x

- (vii) **Adopt a comprehensive land use plan for the municipality:** *Provided*, That the formulation, adoption, or modification of said plan shall be in coordination with the approved provincial comprehensive land use plan;

(viii) **Reclassify land within the jurisdiction of the municipality subject to the pertinent provision of this Code;**

(ix) **Enact integrated zoning ordinances in consonance with the approved comprehensive land use plan, subject to existing laws, rules and regulations;** establish fire limits or zones, particularly in populous centers; and regulate the construction, repair or modification of buildings within fire limits or zones in accordance with the provisions of the Fire Code; (Emphasis supplied)

On the other hand, Executive Order No. 72 provides:

SECTION 1. Plan formulation or updating. - **(a) Cities and municipalities shall continue to formulate or update their respective comprehensive land use plans, in conformity with the land use planning and zoning standards and guidelines prescribed by the HLURB pursuant to national policies.**

As a policy recommending body of the LGU, the city or municipal development council (CDC/MDC) shall initiate the formulation or updating of its land use plan, in consultation with the concerned sectors in the community. For this purpose, the CDC/MDC may seek the assistance of any local official or field officer of NGA's operation in the LGU.

The city or municipal planning and development coordinator (CPDC/MPDC) and/or the city or municipal agriculturist, if there is any, shall provide the technical support services and such other assistance as may be required by the CDC/MDC to effectively carry out this function.

The comprehensive land use plan prepared by the CDC/MDC shall be submitted to the sangguniang panglungsod or sangguniang bayan, as the case may be, for enactment into a zoning ordinance. Such ordinance shall be enacted and approved in accordance with Articles 107 and 108 of the Implementing Rules and Regulations (IRR) of the LGC.

(b) The comprehensive land use plans of component cities and municipalities shall be formulated, adopted, or modified in accordance with the approved provincial comprehensive land use plans.

(c) Cities and municipalities of metropolitan Manila shall continue to formulate or update their respective comprehensive land use plans, in accordance with the land use planning and zoning standards and guidelines prescribed by the HLURB pursuant to EO 392, S. of 1990, and other pertinent national policies.

x x x x (Emphasis supplied)

Under Section 3(m), Rule 131 of the Rules of Court, there is a presumption that official duty has been regularly performed. Thus, in the absence of evidence to the contrary, there is a presumption that public officers performed their official duties regularly and legally and in compliance with applicable laws, in good faith, and in