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FIRST DIVISION

[G.R. No. 157118, December 08, 2003]

THE ILOILO CITY ZONING BOARD OF ADJUSTMENT AND APPEALS AND THE CITY GOVERNMENT OF ILOILO, REPRESENTED BY HON. CITY MAYOR JERRY P. TREÑAS, PETITIONERS, VS. GEGATO-ABECIA FUNERAL HOMES, INC., REPRESENTED BY ITS ATTORNEY-IN-FACT, DANIEL FAJARDO, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

This is a petition for review under Rule 45 of the Rules of Court assailing the December 19, 2002 Order[1] of the Regional Trial Court of Iloilo City, Branch 29 in Civil Case No. 02-27308 which granted the issuance of a writ of mandamus directing the City Government of Iloilo to issue a permit to operate a funeral establishment in favor of respondent Gegato-Abecia Funeral Homes, Inc.

The undisputed facts show that on May 2, 2001, the City Council of Iloilo enacted Zoning Ordinance No. 2001-072[2] which was duly ratified by the Housing and Land Use Regulatory Board (HLURB). Section 41 (3)(d) of said ordinance provides, among others, for a prohibition to operate a funeral establishment at a minimum radial distance of at least 25 meters from restaurants, food centers and other food establishments, thus:

> Section 41 3(d). Funeral Establishments shall be at a minimum radial distance from the following:
>
> d.1 restaurants, food center and other food establishments - at least 25 meters.
>
> d.2 markets - at least 50 meters.
>
> d.3 abattoirs, schools and hospitals - at least 200 meters.[3]

Under the same ordinance, funeral establishments are classified and allowed to operate in certain areas, as follows:[4]

> a) Funeral Establishments shall be classified as ...:
>
> a.1. Category I - funeral establishments with chapels, embalming facilities and offering funeral services.
>
> Category II - funeral establishments with chapels and offering funeral services without embalming facilities; and

Category III - funeral establishments offering only funeral services from house of the deceased to the burial place.

b) Funeral establishments shall be allowed in the following zones:

Category I - C2 or an area within the city with quasi-trade business activities and services performing complementary/supplementary functions to principally commercial zone.

Category II - C1 or an area within the city principally for trade, services and business activities ordinarily referred to as Central Business District; C-2; and Institutional Zone.

Category III - C1; C2; and Institutional Zone.

On June 17, 2002, respondent applied with the City Zoning Board of Adjustments and Appeals (CZBAA) of Iloilo for the issuance of a permit to operate a funeral establishment on a 4-storey building located between a restaurant[5] and a bakery in the commercial zone of Iloilo City, classified as C2. Invoking Section 46 of the zoning ordinance which gives the CZBAA the discretion to grant exceptions from the provisions thereof,[6] respondent contended that since its business is classified under Category II, *i.e.*, without embalming facilities, it should be excepted from the prohibition to operate a funeral establishment at a radial distance of less than 25 meters from food establishments.

In Resolution No. 7, dated June 25, 2002, the CZBAA of Iloilo denied respondent's application. Pertinent portion thereof reads:

WHEREAS, SECTION 47 sets the procedures for Granting of Exceptions and Variances, which is the specific issue raised by the applicant;

WHEREAS, the board took cognizance of existing HLURB Regulations, CLUP presentations on Flood-Prone Areas, the role of the Iloilo City Zoning Board of Adjustment and Appeals being a creation and implementor of the aforementioned ordinance;

WHEREAS, the said ordinance provides that Section 41.3(d) "Funeral establishments shall be at minimum radial distance from the following:

d.1. restaurants - at least 25 meters xxx" and shall conform with existing laws, rules and regulations, affecting the same;

NOW, THEREFORE, premises considered and on motion of Atty. Saturnino B. Gonzales, Jr., duly seconded by Mr. Florendo Besana and Atty. Mary Milagros A. Hechanova, resolve as it is hereby resolved to DENY the appeal of GEGATO-ABECIA Funeral Homes, Inc. for exception and for issuance of a Mayor's Permit to operate a funeral parlor at Brgy. Quintin Salas, Jaro, Iloilo City.

Unanimously APPROVED.[7]

Consequently, respondent filed a petition for mandamus[8] with the Regional Trial Court of Iloilo City, Branch 29 to compel the CZBAA of Iloilo to grant its prayer for exception and to issue the corresponding permit to operate a funeral establishment under Category II. Respondent claimed that Zoning Ordinance No. 2001-072 is unconstitutional insofar as it prohibits the operation of funeral establishments without embalming facilities (Category II) within a radial distance of less than 25 meters from food establishments; and assuming that the ordinance is valid, the CZBAA gravely abused its discretion in outrightly denying the application.

In its Answer,[9] the CZBAA of Iloilo averred that respondent violated the rule on exhaustion of administrative remedies as it failed to appeal the decision to the HLURB as mandated by Section 56(C) of Zoning Ordinance No. 2001-072. It further averred that the exception prayed for cannot be granted because the 25 meter radial distance rule which was in fact copied from the Internal Rules and Regulations of the HLURB on applications for funeral establishments,[10] applies to all categories of funeral establishments, including those without embalming facilities.

On December 19, 2002, the trial court rendered a decision in favor of respondent. It did not pass upon the constitutionality of the zoning ordinance but nevertheless ruled that the CZBAA of Iloilo gravely abused its discretion in denying the application without giving respondent an opportunity to prove that its application is meritorious. The court *a quo* further held that respondent's resort to judicial remedy is correct because under the Local Government Code, the power to act on pending applications for locational clearance is now vested with local government units and no longer with the HLURB per resolution of the latter dated July 19, 2002. It thus proceeded to assess the merits of respondent's appeal for exception and thereafter issued the writ of mandamus prayed for. The dispositive portion of the assailed order, states:

> WHEREFORE, premises considered, and finding the prayer for Mandamus to be impressed with merit, a Writ of Mandamus is hereby issued against the respondents directing them to grant the appeal for exception and to issue the corresponding Mayor's Permit for the Gegato-Abecia Funeral Homes, Inc. to operate a funeral establishment under Category II of the City Zoning Ordinance in the building standing on the property of petitioner along the Highway of Barangay Quintin Salas, Jaro, Iloilo City.
>
> SO ORDERED.[11]

A motion for reconsideration thereof was denied on February 12, 2003.[12]

Hence, petitioners filed the instant petition based on the following legal issues: (1) whether or not respondent violated the rule on exhaustion of administrative remedies; and (2) whether or not the trial court erred in issuing a writ of mandamus directing the CZBAA of Iloilo to issue a permit to operate a funeral establishment.

The settled rule is that before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such

remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the court's intervention is fatal to one's cause of action. Accordingly, absent any finding of waiver or estoppel, the case is susceptible of dismissal for failure to state a cause of action. This doctrine of exhaustion of administrative remedies is not without practical and legal reasons, for one thing, availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. It is no less true to state that courts of justice for reasons of comity and convenience will shy away from a dispute until the system of administrative redress has been completed and complied with so as to give the administrative agency concerned every opportunity to correct its error and to dispose of the case.[13]

In *Systems Plus Computer College of Caloocan City v. Local Government of Caloocan City*,[14] the Court affirmed the dismissal of a petition for *mandamus* to compel the City of Caloocan to classify certain parcels of land as actually, directly and exclusively used for educational purposes and to grant the corresponding tax exemption. It ruled that petitioner cannot in the guise of raising pure question of law, seek judicial intervention without exhausting the available administrative remedies, thus –

> Petitioner also argues that it is seeking to enforce, through the petition for mandamus, a clear legal right under the Constitution and the pertinent provisions of the Local Government Code granting tax exemption on properties actually, directly and exclusively used for educational purposes. But petitioner is taking an unwarranted shortcut. The argument gratuitously presumes the existence of the fact which it must first prove by competent and sufficient evidence before the City Assessor. It must be stressed that the authority to receive evidence, as basis for classification of properties for taxation, is legally vested on the respondent City Assessor whose action is appealable to the Local Board of Assessment Appeals and the Central Board of Assessment Appeals, if necessary.
>
> The petitioner cannot bypass the authority of the concerned administrative agencies and directly seek redress from the courts even on the pretext of raising a supposedly pure question of law without violating the doctrine of exhaustion of administrative remedies. Hence, when the law provides for remedies against the action of an administrative board, body, or officer, as in the case at bar, relief to the courts can be made only after exhausting all remedies provided therein. Otherwise stated, before seeking the intervention of the courts, it is a precondition that petitioner should first avail of all the means afforded by the administrative processes.[15]

In the case at bar, respondent failed to exhaust the available administrative remedies before seeking judicial intervention *via* a petition for mandamus. Section 55C of Zoning Ordinance No. 2001-072, which was duly reviewed and ratified by the Housing and Land Use Regulatory Board, categorically provides that "[d]ecisions of the Local Zoning Board of Adjustment and Appeals shall be appealable to the HLURB."

Under Section 5 of Executive Order No. 648, series of 1981,[16] the Human

Settlements Regulatory Commission (HSRC) later renamed as Housing and Land Use Regulatory Board (HLURB), pursuant to Section 1 (c) of Executive Order No. 90, series of 1986,[17] has the power to:

> a) Promulgate zoning and other land use control standards and guidelines which shall govern land use plans and zoning ordinances of local governments;...
>
> b) Review, evaluate and approve or disapprove comprehensive land use development plans and zoning ordinances of local government[s];...
>
> x x x x x x x x x
>
> f) **Act as the appellate body on decisions and actions of local and regional planning and zoning bodies and of the deputized officials of the Commission, on matters arising from the performance of these functions.**

On March 23, 1993, then President Fidel V. Ramos issued Executive Order No. 71 devolving the power of the HLURB to approve subdivision plans to cities and municipalities pursuant to the Local Government Code. Section 1 thereof reads:

> SECTION 1. – Cities and municipalities shall heretofore assume the powers of the Housing and Land Use Regulatory Board (HLURB) over the following:
>
> (a) Approval of preliminary as well as final subdivision schemes and development plans of all subdivisions, residential, commercial, industrial and for other purposes of the public and private sectors, in accordance with the provisions of P.D. No. 957 as amended and its implementing standards, rules and regulations concerning approval of subdivision plans;[18]
>
> (b) Approval of preliminary and final subdivision schemes and development plans of all economic and socialized housing projects as well as individual or group building and occupancy permits covered by BP 220 and its implementing standards, rules and regulations;
>
> c) Evaluation and resolution of opposition against the issuance of development permits for any of the said projects, in accordance with the said laws and the Rules of Procedure promulgated by the HLURB incident thereto;
>
> d) Monitoring the nature and progress of land development projects it has approved, as well as housing construction in the case of house and lot packages, to ensure their faithfulness to the approved plans and specifications thereof, and, imposition of appropriate measures to enforce compliance therewith;
>
> In the exercise of such responsibilities, the city or municipality concerned shall be guided by the work program approved by the Board upon evaluation of the developer's financial, technical and administrative