413 Phil. 58

SECOND DIVISION

[G.R. No. 144275, July 05, 2001]

NATIONAL HOUSING AUTHORITY, ANGELO F. LEYNES IN HIS CAPACITY AS GENERAL MANAGER OF NHA, AND LORNA M. SERASPE IN HER CAPACITY AS MANAGER OF HUMAN RESOURCE MANAGEMENT DEPARTMENT OF NHA, PETITIONERS, VS. COURT OF APPEALS, ROSE MARIE ALONZO-LEGASTO IN HER CAPACITY AS PRESIDING JUDGE OF RTC-BR. 99, QUEZON CITY, MENANDRO G. VALDEZ AND RAMON E. ADEA IV, RESPONDENTS.

D E C I S I O N

BELLOSILLO, J.:

This *Petition for Review on Certiorari* seeks to set aside the *Resolution* of the Court of Appeals dated 6 April 2000 which dismissed the *Petition for Certiorari and Prohibition* filed by petitioners, as well as the *Resolution* dated 21 July 2000 denying reconsideration thereof.

Private respondents Menandro G. Valdez and Ramon G. Adea IV were engineers of the National Housing Authority (NHA) assigned to the Freedom Valley Resettlement Site Project (FVR Project) in Sitio Boso-Boso, Antipolo, Rizal. On 13 January 2000, on complaint of First United Constructors Corporation (FUCC) regarding alleged irregularities committed by private respondents, the latter were found guilty by the Office of the Ombudsman of grave misconduct and conduct prejudicial to the best interest of the service.[1]

Perturbed by the adverse decision and apprehensive that it would be immediately implemented, on 15 February 2000Valdez and Adea through counsel wrote herein petitioners Angelo F. Leynes in his capacity as General Manager of the NHA and Lorna M. Seraspe as Manager of the Human Resource Management Department informing them that the decision of the Ombudsman was not yet final and executory and that they were still filing a motion for reconsideration and insisting that they were still legally entitled to remain in office.

On 16 February 2000, notwithstanding the letter of private respondents Valdez and Adea, they were officially served the decision of the Ombudsman together with a memorandum from petitioner Leynes informing them of their termination from service effective immediately. Consequently, on 18 February 2000 private respondents filed with the Regional Trial Court of Quezon City a *Complaint for Injunction with Application and Prayer for the Issuance of a Writ of Preliminary Prohibitory Injunction and/or Temporary Restraining Order*.[2]

At the hearing on the issuance of the writ of preliminary injunction, petitioners vigorously questioned the jurisdiction of the trial court.[3] Invoking Sec. 15 of RA 6770[4] petitioners insisted that jurisdiction was vested in the Ombudsman and not

in the trial court. However, in her order of 9 March 2000,[5] respondent judge held that Sec. 15 of RA 6770 which provides that "no court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure questions of law" was not applicable to the instant case, noting that the reliefs prayed for by private respondents were not in the nature of an appeal or application for remedy against the decision of the Ombudsman. Consequently, on 14 March 2000 the trial court granted private respondents' prayer for the issuance of the writ of a preliminary injunction after finding that petitioners' implementation of the Ombudsman's decision was premature.[6]

Upon receipt of the 9 March 2000 order of the trial court, petitioners filed with the Court of Appeals a *Petition for Certiorari and Prohibition* but the appellate court dismissed the same for failure of petitioners to file a *Motion for Reconsideration* with the court *a quo*.[7] Petitioners moved to reconsider the appellate court's decision but it was likewise denied.[8] Hence, the instant *Petition for Review on Certiorari*.[9]

Citing *Macawiwili Gold Mining and Development Co. Inc. v. Court of Appeals*,[10] petitioners maintain that a motion for reconsideration is not a condition precedent to the filing of a petition for certiorari if the question raised before the appellate court has been raised in and passed upon by the court below.

We find petitioners' contention meritorious. Section 1 of Rule 65 of the 1997 Rules of Civil Procedure provides -

> Sec. 1. *Petition for certiorari*. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

In essence, a writ of certiorari may be issued only when petitioner has no other plain, speedy and adequate remedy in the ordinary course of law. Hence, generally, a motion for reconsideration must first be filed with the lower court prior to resorting to the extraordinary writ of certiorari since a motion for reconsideration is still considered an adequate remedy in the ordinary course of law. The rationale for the filing of a motion for reconsideration is to give an opportunity to the lower court to correct its imputed errors. Generally, only when a motion for reconsideration has been filed and subsequently denied can petitioner avail of the remedy of the writ of certiorari.

However, in *Progressive Development Corporation v. Court of Appeals*[11] we held that while generally a motion for reconsideration must first be filed before resorting to certiorari in order to give the lower court an opportunity to rectify its errors, this rule admits of exceptions and is not intended to be applied without considering the circumstances of the case. The filing of a motion for reconsideration is not a condition *sine qua non* when the issue raised is purely one of law, or where the error