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[G.R. No. 137718, July 27, 1999]

REYNALDO O. MALONZO, IN HIS CAPACITY AS CITY MAYOR OF CALOOCAN CITY, OSCAR MALAPITAN, IN HIS CAPACITY AS VICE-MAYOR OF CALOOCAN CITY, CHITO ABEL, BENJAMIN MANLAPIG, EDGAR ERICE, DENNIS PADILLA, ZALDY DOLARTE, LUIS TITO VARELA, SUSAN PUNZALAN, HENRY CAMAYO, IN THEIR CAPACITIES AS MEMBERS OF THE SANGGUNIANG PANLUNGSOD OF CALOOCAN CITY, PETITIONERS, VS. HON. RONALDO B. ZAMORA, IN HIS CAPACITY AS EXECUTIVE SECRETARY, HON. RONALDO V. PUNO, IN HIS CAPACITY AS UNDER-SECRETARY OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, AND EDUARDO TIBOR, RESPONDENTS.

D E C I S I O N

ROMERO, J.:

Consistent with the doctrine that local government does not mean the creation of *imperium in imperii* or a state within a State, the Constitution has vested the President of the Philippines the power of general supervision over local government units.[1] Such grant of power includes the power of discipline over local officials, keeping them accountable to the public, and seeing to it that their acts are kept within the bounds of law. Needless to say, this awesome supervisory power, however, must be exercised judiciously and with utmost circumspection so as not to transgress the avowed constitutional policy of local autonomy. As the facts unfold, the issue that obtrudes in our minds is: Should the national government be too strong vis-à-vis its local counterpart to the point of subverting the principle of local autonomy enshrined and zealously protected under the Constitution? It is in this light that the instant case shall now be resolved.

During the incumbency of then Macario A Asistio, Jr., the *Sangguniang Panlungsod* of Caloocan City passed **Ordinance No. 0168, S. 1994,**[2] authorizing the City Mayor to initiate proceedings for the expropriation of Lot 26 of the Maysilo Estate registered in the name of CLT Relaty Development Corporation (CLT). The lot, covering an area of 799,955 square meters, was intended for low-cost housing and the construction of an integrated bus terminal, parks and playgrounds, and related support facilities and utilities. For this purpose, the said ordinance appropriated the amount of P35,997,975.00,[3] representing 15% of the fair market value of Lot 26 that would be required of the city government as a deposit prior to entry into the premises to be expropriated.

It turned out, however, that the Maysilo Estate straddled the City of Caloocan and the Municipality of Malabon, prompting CLT to file a special civil action[4] for Interpleader with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction on August 6, 1997, before the Caloocan City Regional

Trial Court, branch 124. The complaint specifically sought to restrain the defendants City of Caloocan and Municipality of Malabon from assessing and collecting real property taxes from CLT and to interplead and litigate among themselves their conflicting rights to claim such taxes.

On December 11, 1997, the Caloocan City *Sangguniang Panlungsod*, under the stewardship of incumbent Mayor Reynaldo O. Malonzo, enacted Ordinance No. 0246, S. 1997,[5] entitled "AN ORDINANCE AMENDING AND SUPPLEMENTING THE PROVISIONS OF CITY ORDINANCE NO. 0168, SERIES OF 1994 AND FOR OTHER RELATED PURPOSES."[6] Under this ordinance, certain amendments were introduced, foremost of which was the city council's decision to increase the appropriated amount of P35,997,975.00 in the previous ordinance to P39,352,047.75, taking into account the subject property's current fair market value.

After failing to conclude a voluntary sale of Lot 26, the city government commenced on March 23, 1998, a suit for eminent domain[7] against CLT before the Caloocan City Regional Trial Court, Branch 126, to implement the subject property's expropriation. Apparently disturbed by this development, the Caloocan City Legal Officer informed the City Mayor through a letter-memorandum[8] dated April 7, 1998, of the pending interpleader case covering Lot 26 and that the same was "a `Prejudicial Question' which must be resolved first by the proper court in order not to put the expropriation proceedings in question." He therefore recommended that "pending the final determination and resolution of the court on the issue (territorial jurisdiction) raised in Civil Case No. C-18019 before Branch 124 of the Regional Trial Court of Caloocan City, the expropriation of the subject property be cancelled and/or abandoned."

In the meantime, after the successful re-election bid of Malonzo, Vice-Mayor Oscar G. Malapitan wrote him a letter[9] dated June 4, 1998, requesting the immediate repair and renovation of the offices of the incoming councilors, as well as the hiring of additional personnel and the retention of those currently employed in the offices of the councilors.

Malonzo acted on said letter and endorsed the same to the Office of the City Treasurer. The latter in turn manifested through a memorandum[10]dated June 26, 1998, that "since the expropriation of CLT Property is discontinued, the appropriation for expropriation of FIFTY MILLION PESOS (P50M)[11] can be reverted for use in a supplemental budget" stating further that he certifies "(F)or its reversion since it is not yet obligated, and for its availability for re-appropriation in a supplemental budget."

Pursuant to the treasurer's certification on the availability of funds to accommodate Vice-Mayor Malapitan's request, Malonzo subsequently endorsed to the *Sangguniang Panlungsod* Supplemental Budget No. 01, Series of 1998, appropriating the amount of P39,343,028.00. The city council acted favorably on Malonzo's endorsement and, thus, passed **Ordinance No. 0254, S. 1998**[12] entitled "AN ORDINANCE PROVIDING PAYMENTS FOR APPROVED ITEMS IN THE SUPPLEMENTAL BUDGET NO. 1 CALENDAR YEAR 1998 AND APPROPRIATING CORRESPONDING AMOUNT WHICH SHALL BE TAKEN FROM THE GENERAL FUND (REVERSION OF APPROPRIATION-

EXPROPRIATION OF PROPERTIES)."

Alleging, however, that petitioners conspired and confederated in willfully violating certain provisions of the Local Government Code of 1991 (hereinafter the "Code") through the passage of Ordinance No. 0254, S. 1998, a certain Eduardo Tibor, by himself and as a taxpayer, filed on July 15, 1998, an administrative complaint for Dishonesty, Misconduct in Office, and Abuse of Authority against petitioners before the Office of the President (OP).[13]

After the complaint was given due course, petitioners filed on October 15, 1998 their Consolidated Answer,[14] pointing out, among other things, that said complaint constituted collateral attack of a validly enacted ordinance whose validity should only be determined in a judicial forum. They also claimed that the assailed ordinance was enacted strictly in accordance with Article 417 of the Rules and Regulations Implementing the Local Government Code of 1991 (hereinafter, the "Rules"), as amended by Administrative Order No. 47 dated April 12, 1993.

After several exchanges of pleadings,[15] petitioners, citing Section 326 of the Code and Article 422, Rule XXXIV of the Rules, filed on February 7, 1999, a Motion to Refer the Case to the Department of Budget and Management (DBM) on the ground that the DBM has been granted power under the Code to review ordinances authorizing the annual or supplemental appropriations of, among other things, highly urbanized cities such as Caloocan City. This motion, however, remained unresolved.

Two days later, after learning that a certain Teotimo de Guzman Gajudo had filed an action for the Decalaration of Nullity of Ordinance No. 0254, Series of 1998, before the Caloocan City Regional Trial Court,[16] petitioners filed with the OP a Manifestation and Very Urgent Motion to Suspend Proceedings on the ground that the determination of the validity of said ordinance was a prejudicial question. Likewise, this motion was not acted upon by the OP.

Thus, without resolving the foregoing motions of petitioners, the OP rendered its assailed judgment[17] on March 15, 1999, the decretal portion of which reads:

> "WHEREFORE, herein respondents Mayor Reynaldo Malonzo, Vice-mayor Oscar G. Malapitan and Councilors Chito Abel, Benjamin Manlapig, Edgar Erice, Dennis Padilla, Zaldy Dolatre, Susana Punzalan, Henry Camayo, and Luis Tito Varela, all of Caloocan City, are hereby adjudged guilty of misconduct and each is meted the penalty of SUSPENSION[18] from office for a period of three (3) months without pay to commence upon receipt of this Decision. This Decision is immediately executory.
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> SO ORDERED."

On even date, the Department of Interior and Local Government (DILG) administered Macario E. Asistio III's oath of office as Acting Mayor of Caloocan City.

Without moving for reconsideration of the OP's decision, petitioners filed before this Court on March 22, 1999, the instant Petition for *Certiorari* and Prohibition With Application for Preliminary Injunction and Prayer for Restraining Order, With

alternative Prayer for Preliminary Mandatory Injunction.[19]

In a resolution of this Court dated April 5, 1999, we resolved to set the case for oral argument[20] on April 20, 1999 while at the same time directed the parties to maintain the *status quo* before March 15, 1999.

To support their petition, petitioners contend that on account of the filing of an action for interpleader by CLT, the expropriation proceedings had to be suspended pending final resolution of the boundary dispute between Malabon and Caloocan City. Due to his dispute, the P50 million appropriation for the expropriation of properties under current operating expenses had not been obligated and no security deposit was forthcoming. It was not at the time a continuing appropriation. This unavoidable discontinuance of the purpose for which the appropriation was made effectively converted the earlier expropriation of P39,352,047.75 into savings as defined by law.

They argue further that there is no truth in the allegation that Ordinance No. 0254, S. 1998 was passed without complying with Sections 50 and 52 of the Local Government Code requiring that on the first regular session following the election of its members and within 90 days thereafter, the *Sanggunian* concerned shall adopt or update its existing rules of procedure. According to them, the minutes of the session held on July 2, 1998 would reveal that the matter of adoption or updating of the house rules was taken up and that the council arrived at a decision to create an *ad hoc* committee to study the rules.[21] Moreover, even if the *Sanggunian* failed to approve the new rules of procedure for the ensuing year, the rules which were applied in the previous year shall be deemed in force and effect until a new ones are adopted.

With respect to the OP's assumption of jurisdiction, petitioners maintained that the OP effectively arrogated unto itself judicial power when it entertained a collateral attack on the validity of Ordinance No. 0254, S. 1998. Furthermore, primary jurisdiction over the administrative complaint of Tibor should have pertained to the Office of the Ombudsman, as prescribed by Article XI, Sections 13 and 15 of the Constitution. They also asserted that the declaration in the OP's decision to the effect that Ordinance No. 0254, S. 1998 was irregularly passed constituted a usurpation of the DBM's power of review over ordinances authorizing annual or supplemental appropriations of, among others, highly-urbanized cities like Caloocan City as provided under Section 326 of the Local Government Code of 1991. In light of said statutory provision, petitioners opined that respondents should have deferred passing upon the validity of the subject ordinance until after the DBM shall have made are view thereof.

Finally, petitioners complained that respondents violated the right to equal protection of the laws when Vice-Mayor Oscar Malapitan was placed in the same class as the rest of the councilors when in truth and in fact, as Presiding Officer of the council, he did not even vote nor participate in the deliberations. The violation of such right, according to petitioners, made the OP's decision a nullity. They concluded that the administrative complaint was anathema to the State's avowed policy of local autonomy as the threat of harassment suits could become a sword of Damocles hanging over the heads of local officials.

Contending that the OP decison judiciously applied existing laws and jurisprudence under the facts obtaining in this case, the Office of the Solicitor General (OSG)[22] disputed petitioners' claims contending that the appropriation of P39,352,047.75 contained in an earlier ordinance (Ord. NO. 0246 S. 1997) for the expropriation of Lot 26 of the Maysilo Estate was a capital outlay as defined under Article 306 (d) of the Code and not current operating expenditures. Since it was a capital outlay, the same shall continue and remain valid until fully spent or the project is completed, as provided under Section 322 of the Code.

The OSG asserted further that the filing on August 6, 1997 of an interpleader case by CLT which owns Lot 26 should not be considered as an unavoidable discontinuance that automatically converted the appropriated amount into savings which could be used for supplemental budget. Since the said amount was not transformed into savings and, hence, no funds were actually available, then the passage of Ordinance No. 0254, S. 1998 which realigned the said amount on a supplemental budget violated Section 321 of the Code requiring an ordinance providing for a supplemental budget to be supported by funds actually available as certified by the local treasurer or by new revenue sources.

Petitioners were likewise faulted for violating Sections 50 and 52 of the Code requiring the *Sangguniang Panlungsod* to adopt or update its existing rules of procedure within the first 90 days following the election of its members. The *Sanggunian* allegedly conducted three readings of Ordinance No. 0254, S. 1998 in one day and on the first day of its session (July 2, 1998) without the *Sanggunian* having first organized itself and adopted its rules of procedure. It was only on July 23, 1998 that the Sanggunian adopted its internal rules of procedure.

As regard petitioners' contention that the administrative complaint of Tibor should have been filed with the Office of the Ombudsman instead of the OP, the OSG pointed out that under Section 60 and 61 of the Code, the OP is vested with jurisdiction to discipline, remove or suspend a local elective official for, among other things, misconduct in office. The Ombudsman has never been vested with original and exclusive jurisdiction regarding administrative complaints involving government officials.

Finally, the OSG sought to dismiss the petition on the grounds of non-exhaustion of administrative remedies before the OP and for failure to follow Section 4, Rule 65 of the 1997 Rules of Civil Procedure which prescribes that "if it [the subject of the petition] involves the acts or omissions of a quasi-judicial agency, and unless provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals."

The petition is impressed with merit.

Preliminarily, we find a need to resolve a couple of procedural issues which have a bearing on the propriety of this Court's action on the petition, to wit: (1) whether the Supreme Court is the proper forum which can take cognizance of this instant petition assailing the decision of the OP, and (2) whether the Supreme Court may entertain the instant petition despite the absence of a prior motion for reconsideration filed by petitioners with the OP.

After a very careful and meticulous review of the parties' respective positions on