

[G.R. No. 143684. July 31, 2000]

RODOLFO MADRID, JR., vs. HON. ANIANO A. DESIERTO, et al.

FIRST DIVISION

Gentlemen:

Quoted hereunder, for your information, is a resolution of this Court dated JUL 31 2000.

G.R. No. 143684 (*Rodolfo Madrid, Jr., vs. Hon. Aniano A. Desierto, et al.*)

This is a special civil action for *certiorari* wherein petitioner seeks the nullification of the Resolution and Order of the Office of the Ombudsman in OMB-1-98-0215, entitled "Albay Accredited Constructors Association, Inc. vs. Mayor Imelda Roces, et al." which dismissed petitioner's complaint and denied his motion for reconsideration, respectively.

This case started when the City Government of Legazpi City, Albay, invited bidders to participate in the development and construction of the Legazpi City Public Market. Portland Trade and Realty Corporation, Chanelay Development Corporation and Liberty Commercial Center (hereinafter, "Liberty") participated in the bidding. After submitting their bid statements, the bidding committee announced that it was awarding the project to Liberty. Thus, the city Government of Legazpi, through Mayor Imelda Roces, entered into a renewable 50-year contract of lease with Liberty wherein the latter will construct a public market on the property of the city government and, thereafter, pay the city government a P5.5 million annual lease for the use of the property. It was also stipulated in the contract that after the end of the 50-year lease, Liberty will transfer ownership of the public market in favor of the City Government of Legazpi City.

Claiming the irregularities, amounting to violations of Sec. 3(e), (g) and (j) of Republic Act No. 3019, attended the awarding of the project to Liberty, petitioner filed a complaint on 9 January 1998, against respondents before the Office of the Ombudsman. In its resolution, dated 29 November 1999, the Ombudsman discussed each of the seven issues raised by petitioner and found no probable cause to hold respondents liable for allegedly violating Republic Act No. 3019. Thus, petitioner's complaint was dismissed. Petitioner filed a motion for reconsideration but the same was denied in his Order dated 16 March 2000. Undaunted, petitioner filed the instant special civil action for *certiorari*.

In dismissing the complaint for lack of probable cause, the Ombudsman stated:

First. On the issue of procedural infirmity due to the lack of approval from the ICC of NEDA Board as required under R.A. 6957, the respondent public officers have sufficiently established that the said procedural requirement is not necessary in the subject transaction. The requirements

under R.A. 6957 refer to transaction under the build-operate-transfer scheme of the government and not to contract involving lease of property just like the one involved in the instant case.

All the elements of a contract of lease are present in the transaction. There is a subject matter, the use of the property of the Legazpi City; a cause or consideration which is the amount of rental that shall be paid by the LCC; and consent among the parties. The mere provision in the contract that the building shall belong to the city government of Legazpi at the termination of the contract will not be sufficient to classify the transaction under the BOT scheme. This kind of provision is ordinary in long-term lease agreement.

However, even granting that the transaction properly falls under the BOT scheme, We likewise submit that the mere lack of the required approval from NEDA would not be a cause for violation of the Anti-Graft and Corrupt Practices Act. If, at all, this defect may be a ground for the rescission or cancellation of the contract.

Second. The issue that another bidder, Chanelay Corporation, ought to have won the bidding is mere conjectural. There was no evidence presented to show that the Chanelay Corporation offered a better bid than the LCC. Moreover, if this allegation has some semblance of truth, We submit that the Chanelay Corporation would have been the first to complain.

Third. On the issue that the conduct of lease failed to specify the value of the market that LCC would construct, the approved plans and specifications attached to the contract negate this charge. In addition, We submit that appropriate measures were resorted by the public respondents to assure that the construction of the market would comply with the approved plans and specifications by providing under the contract that the City Engineer of Legazpi shall oversee the construction of the project.

Fourth. On the issue that the government is prejudiced by the option given to LCC to pay rent on a monthly basis (instead on an annual basis), We find in the negative. Whether the rent is paid monthly or annually would result in the same thing – the receipt by the government of the same sum of money. Moreover, We submit that mere reference made in the contract that the amount of rent shall be such amount annually does not necessarily mean that payment should be made in an annual basis. On the issue raised on the grant of tax relief, We find that it is allowed under Ordinance No. 96-016 (Legazpi City Investment Incentive Code of 1996).

Fifth. The issue that the period of lease granted to LCC may be extended indefinitely without public bidding and the required government

approval is belied by the provision contained in the contract. The contract provides that after the term of the lease, the government shall have the option to negotiate for its renewal. This provision, which incidentally is standard in any contract of lease, does not mean that the procedural requirement in the execution of the contract as well as the limit in the term of the contract shall not be observed in case the contract is renewed.

Sixth. The issue raised that the LCC has the absolute right to determine and fix reasonable fees, rentals and charges on the market is misplaced. It is but proper that being the lessee of the leased premises and the operator of the market, discretion and prerogatives must be exercised by the LCC in the management of the market.

Seventh. The issue that the LCC did not post any performance bond was adequately explained by the fact that the city government of Legazpi has failed to completely surrender the leased premises to the LCC free from any occupant. In effect, the obligation of LCC to proceed with the construction of the commercial complex and the concomitant obligation to post performance are conditional upon the fulfillment by the city government of Legazpi of its obligation to clear the premises from its old market tenants. We find that the non-fulfillment by the lessor of its obligation has the effect of suspending the obligation of the lessee-LCC.

The prevailing rule is that the court will not interfere with the decision of the Ombudsman in prosecuting or dismissing a complaint. Only in instances where there is a showing of patent abuse of discretion will this Court step in and substitute its judgment over that of the ombudsman.

Our review of the very exhaustive pleading of petitioner shows that the decision of the Office of the Ombudsman must be upheld. Petitioner failed to sufficiently show that any grave abuse of discretion was committed by the Ombudsman in rendering the challenged resolution and order which, on the contrary, appear to be in accord with the facts and applicable law.

IN VIEW OF THE FOREGOING, the petition is hereby DISMISSED.

Very truly yours,

VIRGINIA ANCHETA-SORIANO

Clerk of Court

(Sgd.) ENRIQUETA ESGUERRA-VIDAL

Asst. Clerk of Court