Supreme Court E-Library

This rule, however, is not applicable in this case. What the petitioner assailed before the RTC was a *Summary Deportation Order of the BOC, not a BOC decision* based on the recommendation of the BSI after due hearing as mandated by Rule IX of the said Rules of Procedure.

IN LIGHT OF ALL THE FOREGOING, the petition is *DENIED* for lack of merit. Costs against the petitioner.

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, and *Austria-Martinez, JJ.,* concur.

Chico-Nazario, J., on leave.

FIRST DIVISION

[G.R. No. 165341. February 27, 2006]

GILBERTO M. DE LOS REYES and CESAR Q. CONCON, *petitioners, vs.* **THE HONORABLE SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

REMEDIAL LAW; 2002 REVISED INTERNAL RULES OF THE SANDIGANBAYAN; MOTION FOR RECONSIDERATION; NOT REQUIRED TO BE SET FOR A HEARING ON A SPECIFIC DATE AND TIME. — [P]etitioners were not obliged to set for hearing their motion for reconsideration of the Sandiganbayan decision. Petitioners, as movants, were obliged merely to serve a copy of their motion for reconsideration on the Special Prosecutor, who is then given a period of five (5) days from said service within which to file his objections thereto. Such motion shall be deemed submitted for resolution without any further arguments from the parties.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Isaias P. Giduquio and *Gregorio B. Escasinas* for petitioners.

D E C I S I O N

CALLEJO, SR., *J.*:

For review by the Court is the Decision[1] of the Sandiganbayan in A/R No. 003 affirming, on appeal, the Decision of the Regional Trial Court (RTC) of Cebu City, Branch 7, convicting the accused therein of violating Section 106 of Presidential Decree (P.D.) No. 464, in relation to Section 30 thereof, otherwise known as the Property Tax Code.

An Information was filed in the Municipal Trial Court (MTC) of Cebu City, Branch 5, charging Antonio Callanta, the Officer-in-Charge of the City Assessor of Cebu City; Gilberto de los Reyes, Assistant Head II, and Cesar Q. Concon, Tax Mapper IV, of the same office, with violating Section 106 of the Property Tax Code, in relation to Section 30. The case was docketed as Criminal Case No. 32750-R. The inculpatory portion of the Information reads:

That in the year 1988 or for sometime subsequent thereto in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused ANTONIO CALLANTA, being then the Incharged (sic) City Assessor of Cebu City, and hence, a public officer, while in the performance of his official functions, taking advantage of his official position, committing the offense in relation to his office, and conspiring and confederating with GILBERTO DELOS REYES and CESAR CONCON, public officers, being then Assistant Head II and Tax Mapper IV, respectively, of the City Assessor, did then and there willfully, unlawfully, criminally violated Section 106 in relation to Section 30, of the Property Tax Code, P.D. 464 committed in the following manner: that a general revision of assessment was

[1] Penned by Associate Justice Diosdado M. Peralta, with Presiding Justice Teresita Leonardo-De Castro and Associate Justice Roland B. Jurado, concurring; *rollo*, pp. 36-48.

Supreme Court E-Library

conducted by the office of the City Assessor in 1988 and sometime thereafter, Notices of assessment together with new tax declarations were subsequently sent to the property owners. Thereafter, accused, without the authority of the Local Board of Assessment Appeals, reassessed the value of certain properties, in contravention of (sic) Section 30 of P.D. 464, which reassessment violated Section 106 of the Real Property Tax Code.

CONTRARY TO LAW.[2]

As synthesized by the Sandiganbayan, the case for the *People* is as follows:

A general revision of the assessment of real properties was made in 1988. Such general revision resulted in the updating of tax declarations and also resulted in the increase and/or decrease in the values of certain real properties. Acting upon the request of some real property owners, accused Antonio Callanta, and herein petitioners Gilberto de los Reyes and Cesar Concon, City Assessor, Assistant Department Head II and Tax Mapper IV, respectively, in their official capacities and without the intervention or participation of the Local Board of Assessment Appeals, granted the request to reassess and to readjust the assessed value of their real properties. The reassessment made resulted in the decrease of the assessed values of some real properties. Thus, new tax declarations were issued to the real property owners reflecting the reduced assessment values.

The Prosecution presented documentary as well as the testimony of a witness, the then incumbent City Assessor of Cebu City, Mr. Palermo Lugo. The documentary evidence submitted by the Prosecution consisted of the following: various Tax Declarations and Notices of Assessment, a document denominated as description of form with the signatures of herein petitioners Gilberto de los Reyes and Cesar Concon, and a portion of the schedule of valuation for 1981 to 1984 which was made the basis of the assessment of real properties in 1988 (Exhibits "A" to "HHHHHH-2").

With respect to accused Antonio Callanta, the Prosecution presented Exhibits "D-1" to "KKK-1", which are all Notices of Assessment sent by the former to the registered owners of the real properties mentioned in the tax declarations informing the owners of the updated assessed values of the said properties and at the

[2] *Rollo*, pp. 92-93.

Supreme Court E-Library

same time advising them as to what course of action to take in case of dissatisfaction with the assessment, a substantial portion of which reads, "In case you are not satisfied with the assessment of your real property, you have within 60 days from the date of receipt hereof the right to appeal to the Local Board of Assessment Appeals, Cebu City, by filing with it a petition under oath, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal pursuant to Sec. 30 of PD 464, as amended." All the Notices of Assessment were signed by accused Antonio Callanta as City Assessor. The former proceeded to act on the requests for reconsideration filed by the affected taxpayers causing the reduction of the assessed values of their real properties as shown in the corresponding tax declarations issued thereafter.

As to herein petitioner Cesar Concon, the Prosecution presented Tax Declaration No. 01078 covering a building owned by the spouses Romulo and Josephine Bernardo with an updated assessment value of ₱312,730.00 marked as Exhibit "LLL". The spouses Bernardo requested for reassessment. Herein petitioner Cesar Concon, in his capacity as Tax Mapper IV of the Office of the City Assessor, acted on the request for reassessment which resulted in the issuance of a new tax declaration (Exhibit "LLL-1") covering the same property with the decreased value of ₱64,310.00. The new tax declaration was approved by herein petitioner Cesar Concon. Other tax declarations (Exhibits "MMM-2" to "JJJJJ-2") with reduced assessment values as approved by the same petitioner were also presented as evidence.

Several new tax declarations (Exhibits "KKKKK-2" to "HHHHHH") with reduced assessment values and approved by herein petitioner Gilberto de los Reyes were also presented as evidence for the Prosecution.

The Prosecution claimed that both petitioners, Gilberto de los Reyes and Cesar Concon were not authorized by law to grant and approve requests for reassessment of real properties with assessed values exceeding ₱100,000.00.[3]

For the defense, the accused therein submitted the following evidence:

The defense presented various documentary as well as testimonial evidence. Accused Antonio Callanta, claimed that as City Assessor, he was authorized to entertain petitions for reconsideration coming

[3] *Rollo*, pp. 37-38.

Supreme Court E-Library

from the owners of real properties whose assessed values were upgraded during the revision of real properties from 1988 and onwards. It was further claimed by the defense that it was a long standing practice of City Assessors, not only in the City of Cebu but also in the different parts of the country, to entertain petitions for reconsideration by the taxpayers, the said authority having been vested [by] law, particularly Sec. 22 of PD 464. To prove such claim, the defense presented as evidence various tax declarations (Exhibits "11" to "16") showing that former City Assessor Demosthenes Querubin readjusted the assessed value of the said tax declarations upon the request for reconsideration by the taxpayers. In addition, the defense presented Exhibit "5", an excerpt of the Real Property Tax Records Management Manual issued by the Department of Finance authorizing the City Assessor to reassess properties of taxpayers who request for such reassessment.

The defense also claimed that herein petitioners Gilberto de los Reyes and Cesar Concon acted on the reassessment of real properties with assessed values of more than ₱100,000.00 by virtue of their designation (Exhibit "3" and Exhibits "31" to "39") to act on all "routinary matters, including the authority to act on petitions for reconsideration on the assessment of the assessed values of real properties, in the absence of the City Assessor, Antonio Callanta.[4]

Meanwhile, administrative charges were likewise filed against the three officers for dishonesty and/or serious irregularities in the performance of duties and public functions before the Office of the Ombudsman. In their Joint Counter-Affidavit, they alleged that the acts complained of were done within the bounds of their official duties and functions, citing as legal basis Sec. 22 of the Property Tax Code; Sec. 30 of such law, the basis of the complaints, does not prohibit the assessor from correcting whatever error or flaw he and his deputies may have made; and they did not derive any benefit from the adjustments nor caused injury to any party. They further explained that "the general revision of real property assessments for the City of Cebu has not been completed nor has the City Assessor certified its completion to the Secretary of Justice, thus taxes under these revised tax declarations are not yet due."[5]

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[4] *Id.* at 38-39.

[5] See *Callanta v. Office of the Ombudsman*, 349 Phil. 584, 591 (1998).

Supreme Court E-Library

Upon the Ombudsman's finding that the three officers were administratively liable as charged, they appealed the decision to this Court, docketed as G.R. Nos. 115253-74.

The three officers had also been criminally charged before the Sandiganbayan with violation of Section 3(e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The case, entitled "*People of the Philippines v. Antonio Callanta, Gilberto De los Reyes and Cesar Concon,*" was docketed as Criminal Case No. 18583.

On September 12, 1994, the MTC of Cebu City, Branch 5, rendered judgment in Criminal Case No. 32750-R, convicting De los Reyes and Concon of the crime charged and exonerating Callanta. The *fallo* of the decision reads:

> WHEREFORE, judgment is rendered ACQUITTING accused Antonio Callanta of the charge of violation of Sec. 106 in relation to Sec. 30 of PD 464, but finding Gilberto de los Reyes and Cesar Concon GUILTY beyond reasonable doubt of the crime of violation of Sec. 106 of PD 464 and, accordingly, each of them is hereby sentenced to serve a prison term of SIX (6) MONTHS with costs.
>
> The cash bond in the amount of ₱2,000.00 put up by Antonio Callanta for his temporary liberty under O.R. No. 1674322 dated February 26, 1993, with the City Treasurer's Office of Butuan City, is ordered returned to him upon proper receipt.
>
> SO ORDERED.[6]

De los Reyes and Concon appealed the decision to the RTC, which rendered judgment on May 31, 1996, affirming the appealed decision. The dispositive portion of the decision reads:

> WHEREFORE, premises above considered, this Court hereby AFFIRMS the decision of the Court *a quo,* dated September 12, 1994 in ACQUITTING accused Antonio Callanta of the crime charged, and in CONVICTING both accused Gilberto de los Reyes and Cesar Concon beyond reasonable doubt of the crime charged, for violating Sec. 106 in relation to Sec. 30 of PD 464, and hereby SENTENCES them to serve straight SIX (6) MONTHS imprisonment, with

[6] *Rollo,* pp. 102-103.

Supreme Court E-Library

MODIFICATION to pay fine of FIVE HUNDRED PESOS (₱500.00) each, and with costs.

This case shall stand as a beacon, warning government officials and employees to be more careful and cautious in the official discharge of their duties and responsibilities. Government and country first, above self.

SO ORDERED.[7]

Meantime, this Court rendered judgment in G.R. Nos. 115253-74 on January 30, 1998, and found petitioners therein administratively liable, suspending them from office for a period of (1) one year.[8]

De los Reyes and Concon appealed their conviction for violating Sec. 106 of the Property Tax Code, in relation to Sec. 30 thereof, via a petition for review in the Sandiganbayan. The case was docketed as A/R No. 003. The following issues were raised:

I

WHETHER OR NOT THE CITY ASSESSOR AND HIS DULY AUTHORIZED DEPUTIES ARE CLOTHED WITH AUTHORITY UNDER THE LAW (PRESIDENTIAL DECREE NO. 464 AS AMENDED) TO REASSESS REAL PROPERTIES SUBJECT TO REALTY TAXATION OR DO THEY HAVE TO SECURE PRIOR AUTHORITY FROM THE LOCAL BOARD OF ASSESSMENT APPEALS.

II

WHETHER OR NOT ACCUSED GILBERTO DE LOS REYES AND CESAR CONCON ARE GUILTY OF VIOLATING SEC. 106 IN RELATION TO SEC. 30 OF PRESIDENTIAL DECREE NO. 464 WHEN THEY APPROVED THE DOWNWARD REASSESSMENT OF CERTAIN REAL PROPERTIES.

III

WHETHER OR NOT PETITIONERS GILBERTO DE LOS REYES AND CESAR CONCON HAVE VIOLATED THE PROVISIONS OF SECTION

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[7] *Id.* at 110.

[8] See *Callanta v. Office of the Ombudsman*, *supra* note 5.

Supreme Court E-Library

106, IN RELATION TO SECTION 30, OF PRESIDENTIAL DECREE NO. 464 WHEN THE GENERAL REVISION OF REAL PROPERTY ASSESSMENTS CONDUCTED BY THE OFFICE OF THE CITY ASSESSOR OF CEBU IN 1988 WAS NOT CERTIFIED TO BY THE CITY ASSESSOR AS HAVING BEEN COMPLETED PURSUANT TO SECTION 23 OF THE SAME DECREE.[9]

On July 28, 2000, the Sandiganbayan rendered judgment in Criminal Case No. 18583 acquitting all the accused therein of the charge of violating Section 3(e) of the Anti-Graft and Corrupt Practices Act.[10]

On July 7, 2004, the Sandiganbayan denied the appeal of De los Reyes and Concon in A/R No. 003, and affirmed the assailed decision of the RTC.[11] The petitioners received a copy of the Decision on July 20, 2004, and filed a motion for reconsideration on August 5, 2004.[12] However, since the motion was not set for hearing, the Sandiganbayan issued a Resolution on August 12, 2004 declaring that the motion was a mere scrap of paper; consequently, the period to appeal had not been suspended, and as such, its decision had become final and executory.[13]

In the present petition, petitioners assail the Decision and Resolution of the Sandiganbayan, alleging that:

FIRST – THE HONORABLE SANDIGANBAYAN ERRED WHEN IT RESOLVED THAT, SINCE PETITIONERS' MOTION FOR RECONSIDERATION WAS NOT SET FOR HEARING AS REQUIRED BY THE RULES OF COURT, THE SAME IS A MERE SCRAP OF PAPER AND THUS DID NOT TOLL THE RUNNING OF THE REGLEMENTARY PERIOD TO APPEAL.

SECOND – SINCE IN THE ADMINISTRATIVE ASPECT OF THIS CASE NO LESS THAN THE HONORABLE SUPREME COURT *EN BANC* IN ITS DECISION DATED JANUARY 30, 1998 IN CASE

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[9] *Rollo*, pp. 41-42.

[10] *Rollo*, pp. 75-91.

[11] *Id.* at 36-48.

[12] Sandiganbayan *rollo*, p. 376.

[13] *Rollo*, p. 50.

Supreme Court E-Library

G.R. NOS. 115253-74 FOUND PETITIONERS NOT TO HAVE ACTED WILLFULLY OR THROUGH GROSS NEGLIGENCE OR WITH EVIDENT BAD FAITH ON THE QUESTIONED RE-ASSESSMENTS OF REAL PROPERTIES, IT BEHOOVES UPON THE HONORABLE SANDIGANBAYAN NOT TO HAVE TAKEN A *CONTRA* OR OPPOSING JUDGMENT IN THE EXTANT CRIMINAL CASE.

THIRD – THE HONORABLE SANDIGANBAYAN ERRED WHEN IT PREEMPTORILY FAILED TO CONSIDER OTHER FACETS AND PERTINENT RATIOCINATIONS OF THE APPELLATE COURT'S (RTC) ASSAILED DECISION WHICH AMOUNTED TO GRAVE ABUSE OF DISCRETION.[14]

The pivotal issue for resolution in this case is whether the Decision of the Sandiganbayan had attained finality before petitioners filed the instant petition before the Court.

Petitioners aver that they were not mandated to set for hearing their motion for reconsideration of the Sandiganbayan's ruling in A/R No. 003. They insist that they were merely required to serve a copy of their motion to the Special Prosecutor, applying by analogy Sections 1, 3 and 4 of Rule 121 of the Rules of Criminal Procedure. They maintain that they complied with the said Rules, and seasonably served copies of their motion on the Special Prosecutor, as well as the Office of the Solicitor General.

Finally, petitioners argue that even if they were required to set their motion for hearing, the interest of justice would be better served if such Rules would be relaxed in their favor. They cite the rulings of this Court in *People v. Hon. Leviste*,[15] *Dra. Nepomuceno v. Court of Appeals*,[16] and *Basco v. Court of Appeals*[17] to support their stance.

For its part, the Office of the Special Prosecutor cites Sections 4 and 5 of Rule 15 of the 1997 Rules of Civil Procedure to

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[14] *Id.* at 11.

[15] 325 Phil. 525 (1996).

[16] 363 Phil. 304 (1999).

[17] 392 Phil. 251 (2000).

Supreme Court E-Library

support its contention that the setting of a motion for reconsideration for hearing is mandatory, and that failure to do so is fatal to the petition.

The petition is meritorious.

In declaring that petitioners' motion for reconsideration before it was a mere scrap of paper, the Sandiganbayan failed to cite any rule as basis therefor. Indeed, there is no rule in the 2002 Revised Internal Rules of the Sandiganbayan which requires a movant to set such motion for hearing on a specific date and time. Under the second paragraph of Section 2, Rule 1, Part 1 of such Rules, "the Rules of Court, resolutions, circulars and other issuances promulgated by the Supreme Court relating to or affecting the Regional Trial Courts and the Court of Appeals, insofar as applicable, shall govern all actions and proceedings filed with the Sandiganbayan." Hence, Rule 15 of the 1997 Rules of Civil Procedure relative to hearings before the MTC and the RTC, shall govern actions and proceedings in the Sandiganbayan only in the absence of a similar provision in the graft court's Revised Internal Rules.

What was pending before the Sandiganbayan was the petitioners' appeal (via petition for review) from the decision of the RTC, affirming the decision of the MTC. Under the last paragraph of Section 1, Rule VII of the Revised Internal Rules of the Sandiganbayan, which took effect on October 1, 2002, the provisions of Section 3, Rule 49 of the 1997 Rules of Civil Procedure, as amended, shall apply to motions in appealed cases:

> SECTION 1. *Motion Day.* – Except for motions which may be acted upon *ex parte,* all motions shall be scheduled for hearings on a Friday, or if that day is a non-working holiday, on the next working day.
>
> Motions requiring immediate action may be acted upon on shorter notice.
>
> ***In appealed cases, the provision of Sec. 3, Rule 49 of the 1997 Rules of Civil Procedure, as amended, on Motions shall apply.***[18]

[18] Italics and emphasis supplied.

Supreme Court E-Library

On the other hand, Section 3 of Rule 49 of the 1997 Rules of Civil Procedure provides:

> SEC. 3. *No hearing or oral argument for motions.* – Motions shall not be set for hearing and, unless the court otherwise directs, no hearing or oral argument shall be allowed in support thereof. The adverse party may file objections to the motion within five (5) days from service, upon the expiration of which such motion shall be deemed submitted for resolution.

As gleaned from the foregoing provisions, petitioners were not obliged to set for hearing their motion for reconsideration of the Sandiganbayan decision. Petitioners, as movants, were obliged merely to serve a copy of their motion for reconsideration on the Special Prosecutor, who is then given a period of five (5) days from said service within which to file his objections thereto. Such motion shall be deemed submitted for resolution without any further arguments from the parties.

Thus, in perfunctorily denying petitioners' motion for reconsideration of its decision and declared that such decision was final and executory, the Sandiganbayan acted contrary to its own rules. Patently then, the assailed resolution of the Sandiganbayan is a nullity.

IN LIGHT OF ALL THE FOREGOING, the petition is *GRANTED*. The August 12, 2004 Resolution of the Sandiganbayan is *NULLIFIED*. The Sandiganbayan is *DIRECTED* to resolve Petitioners' motion for reconsideration of its decision in A/R No. 003 in due course.

SO ORDERED.

Panganiban, C.J. (Chairperson), Ynares-Santiago, and *Austria-Martinez, JJ.,* concur.

Chico-Nazario, J., on leave.