



Republic of the Philippines  
**Supreme Court**  
 Baguio City

SUPREME COURT OF THE PHILIPPINES  
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FIRST DIVISION

**CITY OF DAVAO, represented  
 by RODRIGO R. DUTERTE, in  
 his capacity as City Mayor,  
 RIZALINA JUSTOL, in her  
 capacity as the City Accountant,  
 and ATTY. WINDEL E.  
 AVISADO, in his capacity as  
 City Administrator,**  
 Petitioner,

**G.R. No. 181149\***

Present:

SERENO, C.J., Chairperson,  
 LEONARDO-DE CASTRO,  
 DEL CASTILLO,  
 PERLAS-BERNABE, and  
 CAGUIOA, JJ.

- versus -

**ROBERT E. OLANOLAN,**  
 Respondent.

Promulgated:

**APR 17 2017**

X-----X

**DECISION**

**PERLAS-BERNABE, J.:**

Assailed in this petition for review on *certiorari*<sup>1</sup> are the Decision<sup>2</sup> dated June 29, 2006 and the Resolution<sup>3</sup> dated November 21, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 00643 which: (a) nullified and set aside the Orders dated September 5, 2005<sup>4</sup> and September 22, 2005<sup>5</sup> of the Regional Trial Court of Davao City, Branch 16 (RTC) in Spec. Civil Case No. 31,005-2005, dismissing the petition for *mandamus* filed by respondent Robert E. Olanolan (respondent) on procedural grounds; and (b)

\* Part of the Court's Case Decongestion Program.

<sup>1</sup> *Rollo*, pp. 7-46.

<sup>2</sup> Id. at 50-69. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Edgardo A. Camello and Sixto C. Marella, Jr. concurring.

<sup>3</sup> Id. at 71- 80. Penned by Associate Justice Edgardo A. Camello with Associate Justices Jane Aurora C. Lantion and Elihu A. Ybañez concurring.

<sup>4</sup> Id. at 103-104. Penned by Presiding Judge Emmanuel C. Carpio.

<sup>5</sup> Id. at 105-109.

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directed petitioner City of Davao (petitioner) to immediately release the withheld funds of Barangay 76-A, Bucana, Davao City (Brgy. 76-A).

### The Facts

On July 15, 2002, respondent was elected and proclaimed *Punong Barangay* of Brgy. 76-A. On July 25, 2002, an election protest was filed by the opposing candidate, Celso A. Tizon (Tizon), before the Municipal Trial Court in Cities, Davao City (MTCC). Tizon's election protest was initially dismissed by the MTCC, but was later granted by the Commission on Elections (COMELEC), 2<sup>nd</sup> Division, on appeal. Hence, Tizon was declared the duly-elected *Punong Barangay* of Brgy. 76-A.<sup>6</sup>

Respondent filed a motion for reconsideration<sup>7</sup> before the COMELEC, but to no avail. Thus, he filed a Petition for *Certiorari*, *Mandamus* and Prohibition, with prayer for Issuance of a Temporary Restraining Order<sup>8</sup> (TRO), before the Court, docketed as G.R. No. 165491. On November 9, 2004, the Court *en banc* gave due course to the petition and issued a *Status Quo Ante* Order (SQAQO)<sup>9</sup> which was immediately implemented by the Department of Interior and Local Government (DILG). Thus, respondent was reinstated to the disputed office.<sup>10</sup>

Upon his reinstatement, respondent presided over as Punong Barangay of Brgy. 76-A which, in the regular course of business, passed Ordinance No. 01, Series of 2005,<sup>11</sup> on January 5, 2005, otherwise known as the "General Fund Annual Budget of Barangay Bucana for Calendar Year 2005" totalling up to ₱2,216,180.20. Likewise included in the local government's annual budget is the Personnel Schedule amounting to ₱6,348,232.00, which formed part of the budget of the General Administration, appropriated as salaries and *honoraria* for the 151 employees and workers of Brgy. 76-A.<sup>12</sup>

On March 31, 2005, the Court *en banc* rendered a Decision<sup>13</sup> dismissing respondents' petition in G.R. No. 165491. Consequently, it also recalled its SQAQO issued on November 9, 2004<sup>14</sup> (Recall Order). Undaunted, respondent filed a motion for reconsideration<sup>15</sup> on April 29, 2005.<sup>16</sup>

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<sup>6</sup> Id. at 51.

<sup>7</sup> Not attached to the *rollo*.

<sup>8</sup> Not attached to the *rollo*.

<sup>9</sup> *Rollo*, p. 281.

<sup>10</sup> Id. at 51.

<sup>11</sup> Id. at 283-284. Entitled "AN ORDINANCE GRANTING LEGISLATIVE AUTHORITY TO THE GENERAL FUND ANNUAL BUDGET OF BARANGAY BUCANA FOR CALENDAR YEAR 2005."

<sup>12</sup> Id. at 51-52. The amount of ₱2,216,180.20 was appropriated as Development Fund but the total amount of the General Fund was ₱12,238,201.00. See also p. 284.

<sup>13</sup> Id. at 417-427.

<sup>14</sup> Id. at 426.

<sup>15</sup> Id. at 314-346.

<sup>16</sup> Id. at 52.

In the meantime, the Regional Office of the DILG, Region XI rejected the request of Tizon's legal counsel for immediate implementation of the Court's Recall Order on the ground that the timely filing of respondents' motion for reconsideration had stayed the execution of the March 31, 2005 Decision. The City Legal Officer of petitioner, on the other hand, opined<sup>17</sup> that the Recall Order was in effect, an order of dissolution which is immediately executory and effective. On the basis of the latter's opinion, the City of Davao thus refused to recognize all acts and transactions made and entered into by respondent as *Punong Barangay* after his receipt of the Recall Order as it signified his immediate ouster from the disputed office.<sup>18</sup>

This notwithstanding, the Office of the *Sangguniang* Barangay of Brgy. 76-A issued Resolution No. 115, Series of 2005<sup>19</sup> on June 1, 2005, requesting that the Regional Director of the DILG issue a directive for the officials of petitioner to recognize the legitimacy of respondent as *Punong Barangay* of Brgy. 76-A. On June 6, 2005, respondent wrote a letter to the Regional Office XI of the DILG, endorsing the said Resolution.<sup>20</sup>

Before any action could be taken by the DILG on respondent's letter, or on July 26, 2005, he filed a Petition for *Mandamus etc.*<sup>21</sup> (*mandamus* petition) before the RTC, docketed as Spec. Civil Case No. 31,005-2005, seeking to compel petitioner to allow the release of funds in payment of all obligations incurred under his administration.<sup>22</sup>

In the interim, the Court *en banc* issued a Resolution<sup>23</sup> dated June 28, 2005, denying with finality respondent's motion for the reconsideration of its March 31, 2005 Decision in G.R. No. 165491 for lack of merit.<sup>24</sup>

### The RTC Ruling

In an Order<sup>25</sup> dated September 5, 2005, the RTC dismissed respondent's *mandamus* petition on the sole ground that there was still an adequate remedy still available to respondent in the ordinary course of law, *i.e.*, his pending request before the DILG Regional Director to recognize his legitimacy and to give due course to the financial transactions of Brgy. 76-A under his administration. In this regard, respondent was deemed to have violated the doctrine of exhaustion of administrative remedies, which perforce warranted the dismissal of his petition.<sup>26</sup>

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<sup>17</sup> Id. at 303-304.

<sup>18</sup> Id. at 53.

<sup>19</sup> Id. at 309-310.

<sup>20</sup> Id. at 53.

<sup>21</sup> Id. at 265-280.

<sup>22</sup> Id. at 53 and 278.

<sup>23</sup> Id. at 435.

<sup>24</sup> Id. at 54.

<sup>25</sup> Id. at 103-104.

<sup>26</sup> Id.

Dissatisfied, respondent filed a motion for reconsideration but was denied in an Order<sup>27</sup> dated September 22, 2005. Thus, he elevated his case to the CA on *certiorari*, docketed as CA-G.R. SP No. 00643.

### The CA Ruling

In a Decision<sup>28</sup> dated June 29, 2006, the CA nullified and set aside the RTC's Orders, holding that the latter court gravely abused its discretion in dismissing respondent's *mandamus* petition on the ground of failure to exhaust administrative remedies. In so ruling, the CA observed that an exception to the said doctrine was present in that the *mandamus* petition only raised pure legal questions; hence, the same should not have been dismissed.<sup>29</sup>

Although the RTC confined its ruling on the procedural infirmity of the *mandamus* petition, the CA nonetheless proceeded to resolve the substantive issue of the case, *i.e.*, whether or not petitioner should be compelled by *mandamus* to release the funds under respondent's administration. Ruling in the affirmative, the CA ruled that it is the ministerial duty of petitioner to release the share of Brgy. 76-A in the annual budget. Moreover, it found that the city government is not authorized to withhold the said share, as the Local Government Code only mandates that the *Punong Barangay* concerned be accountable for the execution of the annual and supplemental budgets.<sup>30</sup>

Accordingly, the CA directed petitioner to release the withheld funds of Brgy. 76-A, together with the funds for the compensation of the employees and workers which were already due and payable before the Court's issuance of the June 28, 2005 Resolution denying respondent's motion for reconsideration with finality.<sup>31</sup>

Aggrieved, petitioner moved for reconsideration<sup>32</sup> but was denied in a Resolution<sup>33</sup> dated November 21, 2007; hence, this petition.

### The Issue Before the Court

The sole issue in this case is whether or not the CA erred in reversing the RTC's dismissal of respondent's *mandamus* petition.

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<sup>27</sup> Id. at 105-109.

<sup>28</sup> Id. at 50-69.

<sup>29</sup> Id. at 56-63.

<sup>30</sup> Id. at 66-67.

<sup>31</sup> Id. at 67-68.

<sup>32</sup> Not attached to the *rollo*.

<sup>33</sup> *Rollo*, pp. 71-80.

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### The Court's Ruling

The petition is meritorious.

“*Mandamus* is defined as a writ commanding a tribunal, corporation, board or person to do the act required to be done when it or he unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office or which such other is entitled, there being no other plain, speedy, and adequate remedy in the ordinary course of law.”<sup>34</sup> In *Special People, Inc. Foundation v. Canda*,<sup>35</sup> the Court explained that the peremptory writ of *mandamus* is an extraordinary remedy that is issued only in extreme necessity, and the ordinary course of procedure is powerless to afford an adequate and speedy relief **to one who has a clear legal right to the performance of the act to be compelled.**<sup>36</sup>

In this case, respondent has no clear legal right to the performance of the legal act to be compelled. To recount, respondent filed a *mandamus* petition before the RTC, seeking that petitioner, as city government, release the funds appropriated for Brgy. 76-A, together with the funds for the compensation of barangay employees, and all funds that in the future may accrue to Brgy. 76-A, including legal interests until full payment.<sup>37</sup> As it appears, respondent anchors his legal interest to claim such relief on his ostensible authority as *Punong Barangay* of Brgy. 76-A. In this regard, Section 332 of Republic Act No. 7160,<sup>38</sup> otherwise known as the “Local Government Code of 1991,” provides that:

Section 332. Effectivity of Barangay Budgets. – The ordinance enacting the annual budget shall take effect at the beginning of the ensuing calendar year. An ordinance enacting a supplemental budget, however, shall take effect upon its approval or on the date fixed therein.

**The responsibility for the execution of the annual and supplemental budgets and the accountability therefor shall be vested primarily in the punong barangay concerned.** (Emphasis supplied)

However, records clearly show that respondent’s proclamation as *Punong Barangay* was overturned by the COMELEC upon the successful election protest of Tizon, who was later declared the duly-elected *Punong Barangay* of Brgy. 76-A. While the Court *en banc* indeed issued an SQAO on November 9, 2004 which temporarily reinstated respondent to the

<sup>34</sup> *Systems Plus Computer College of Caloocan City v. Local Government of Caloocan City*, 455 Phil. 956, 962 (2003), citing Section 3, Rule 65 of the Rules of Court.

<sup>35</sup> 701 Phil. 365 (2013).

<sup>36</sup> See *id.* at 386-387.

<sup>37</sup> *Rollo*, p. 278.

<sup>38</sup> Entitled “AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991,” approved on October 10, 1991.

disputed office, the same was recalled on March 31, 2005 when a Decision was rendered dismissing respondent's petition in G.R. No. 165491. The dispositive portion of the said Decision reads:

WHEREFORE, the petition is DISMISSED. Accordingly, the *status quo ante* order issued by this Court on November 9, 2004 is hereby RECALLED.<sup>39</sup>

While respondent did file a motion for reconsideration of the March 31, 2005 Decision, the Court's recall of the SQAQO was without any qualification; hence, its effect was immediate and non-contingent on any other occurrence. As such, respondent cannot successfully argue that the SQAQO's recall was suspended during the pendency of his motion for reconsideration.

In fact, as petitioners correctly argue,<sup>40</sup> the Court's SQAQO is akin to preliminary injunctions and/or TROs. As per the November 9, 2004 Resolution issuing the SQAQO, the parties were required "to observe the STATUS QUO prevailing before the issuance of the assailed resolution and order of the Commission on Elections."<sup>41</sup> Therefore, as they carry the same import and effect, the recall of the SQAQO subject of this case should be accorded the same treatment as that of the recall of said provisional reliefs.

The recall of the SQAQO is effectively a dissolution of the said issuance. In *Defensor-Santiago v. Vasquez*,<sup>42</sup> the Court discussed the immediately executory nature of orders dissolving preliminary injunctions and/or TROs:

[A]n order of dissolution of an injunction may be immediately effective, even though it is not final. A dismissal, discontinuance, or nonsuit of an action in which a restraining order or temporary injunction has been granted operates as a dissolution of the restraining order or temporary injunction and no formal order of dissolution is necessary to effect such dissolution. Consequently, a special order of the court is necessary for the reinstatement of an injunction. There must be a new exercise of judicial power.<sup>43</sup>

Thus, considering that respondent had no right to the office of *Punong Barangay* at the time he filed his *mandamus* petition on July 26, 2005, during which the SQAQO had already been recalled, he had no valid legal interest to the reliefs prayed for. In fact, it should be pointed out that respondent's motion for reconsideration before the Court was altogether denied with finality even prior to his filing of the *mandamus* petition, *i.e.*, on

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<sup>39</sup> *Rollo*, p. 426.

<sup>40</sup> *Id.* at 34-36.

<sup>41</sup> *Id.* at 281.

<sup>42</sup> 291 Phil. 664 (1993).

<sup>43</sup> *Id.* at 677. Citations omitted.

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June 28, 2005. This means that, for all legal intents and purposes, respondent could not have even relied on the supposed effectivity of the SQAQO during the pendency of his motion for reconsideration, because at the time he filed his *mandamus* petition, the Court's March 31, 2005 Decision against him had already attained finality. Therefore, stripped of the technical niceties, the Court finds that respondent had no clear legal right to the performance of the legal act to be compelled of, which altogether justifies the dismissal of his *mandamus* petition.

In addition, petitioner could not have been compelled by *mandamus* to release the funds prayed for by respondent in view of the attending circumstances. It is well-settled that "[m]andamus only lies to enforce the performance of a ministerial act or duty and not to control the performance of a discretionary power. Purely administrative and discretionary functions may not be interfered with by the courts. Discretion, as thus intended, means the power or right conferred upon the office by law of acting officially under certain circumstances according to the dictates of his own judgment and conscience and not controlled by the judgment or conscience of others."<sup>44</sup>

In this case, petitioner, as city government, had to exercise its discretion not to release the funds to respondent considering the COMELEC's declaration of Tizon as the duly-elected *Punong Barangay* of Brgy. 76-A. Surely, it was part of petitioner's fiscal responsibility to ensure that the barangay funds would not be released to a person without proper authority. Section 305 (1) of RA 7160 provides that:

Section 305. Fundamental Principles. - The financial affairs, transactions, and operations of local government units shall be governed by the following fundamental principles:

x x x x

(1) Fiscal responsibility shall be shared by all those exercising authority over the financial affairs, transactions, and operations of the local government units;

Barangay funds shall be kept in the custody of the city or municipal treasurer, at the option of the barangay,<sup>45</sup> and any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of the law.<sup>46</sup>

<sup>44</sup> *MERALCO Securities Corp. v. Savellano*, 203 Phil. 173, 181 (1982). Citations omitted.

<sup>45</sup> Section 329. Barangay Funds. - Unless otherwise provided in this Title, all the income of the barangay from whatever source shall accrue to its general fund and shall, at the option of the barangay concerned, be kept as trust fund in the custody of the city or municipal treasurer or be deposited in a bank, preferably government-owned, situated in or nearest to its area of jurisdiction. Such funds shall be disbursed in accordance with the provisions of this Title. Ten percent (10%) of the general fund of the barangay shall be set aside for the sangguniang kabataan.

<sup>46</sup> Section 340. Persons Accountable for Local Government Funds. - Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be

Moreover, “[t]he city or municipality, through the city or municipal mayor concerned, shall exercise general supervision over component barangays to ensure that the said barangays act within the scope of their prescribed powers and functions.”<sup>47</sup> Hence, given the COMELEC’s ruling revoking respondent’s election and proclamation as *Punong Barangay* of Brgy. 76-A, which in fact, was later on validated by no less than the Court, petitioner could not have been faulted for not automatically releasing the funds sought for by respondent in his *mandamus* petition.

At any rate, petitioner points out that the issue in this case has already been rendered moot and academic. In particular, petitioner states that the release of the barangay funds corresponding to the aggregate amount of respondents’ claim is no longer possible given that the budget for the year 2005 has already been exhausted. Notably, respondent did not proffer any objection on the following submissions in the instant petition:

(a) [Petitioner] released funds to the Clerk of Court of the Regional Trial Court of Davao City for payment to the REGULAR employees of Brgy. 76-A for the reason that their continuance in office was not dependent on [respondent’s] incumbency as *Punong Barangay*. With or without [respondent], these employees are secured in their positions. Also, there were available funds in the Barangay 76-A BUDGET to cover their compensation.

(b) In contrast, the other set of Barangay functionaries are contractual or job-order workers, and NOT employees of Barangay 76-A. The budget of Barangay 76-A did not have funds to cover their compensation at the time that they were allowed by [respondent] to work or render service for the Barangay. The funds for the year to cover the compensation of these individuals had already been exhausted by the Barangay itself. That is why Supplemental Budget No. 1 had to be drawn up, which budget was, however, not approved. Supplemental Budget No. 1 was drawn up precisely to pay these workers. But the point is, no funds were available to pay the services of these people when they started rendering services at the behest of [respondent.]<sup>48</sup>

x x x x

Thus, given these supervening circumstances which ostensibly preclude the satisfaction of the reliefs prayed for, respondent’s *mandamus* petition should also be dismissed on the ground of mootness. That being said, the Court finds it unnecessary to delve into the other issues raised in this case.

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accountable and responsible for the safekeeping thereof in conformity with the provisions of this Title. Other local officers who, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof.

<sup>47</sup> See Section 32 of RA 7160.

<sup>48</sup> *Rollo*, pp. 42-44. Underlining omitted.

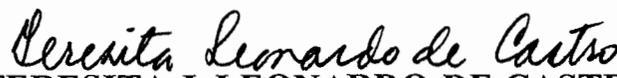
**WHEREFORE**, the petition is **GRANTED**. The Decision dated June 29, 2006 and the Resolution dated November 21, 2007 of the Court of Appeals in CA-G.R. SP No. 00643 are hereby **REVERSED** and **SET ASIDE**. The petition for *mandamus* filed by respondent Robert E. Olanolan in Spec. Civil Case No. 31,005-2005 before the Regional Trial Court of Davao City, Branch 16 is **DISMISSED**.

**SO ORDERED.**

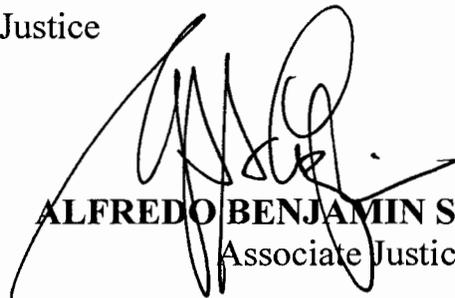
  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice