Republic of the Philippines
Supreme Court
Baguio City

THIRD DIVISION

TGN REALTY CORPORATION,
Petitioner,

- versus -

VILLA TERESA HOMEOWNERS ASSOCIATION, INC.,
Respondent.

G.R. No. 164795

Present:

VELASCO, JR., *Chairperson,*
BERSAMIN,
REYES,
JARDELEZA, and
TIJAM, *JJ.*

Promulgated:

April 19, 2017

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DECISION

BERSAMIN, *J.*:

This case concerns the dispute between the land developer and the residents of its subdivision development regarding the state of improvements on the subdivision. Having been declared by the forum of origin to have not completed the development of the subdivision, and the declaration having been upheld on appeal, the land developer persists in urging the undoing of the decision promulgated on August 6, 2004,[1] whereby the Court of Appeals (CA) denied its petition for review against the adverse ruling of the Office of the President (OP).

Antecedents

Petitioner TGN Realty Corporation owned and developed starting on August 22, 1966 the Villa Teresa Subdivision on a parcel of land situated in Barangays Sto. Rosario and Cutcut, Angeles City, Pampanga. The project soon had many lot buyers who built or bought residential units thereon.

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[1] *Rollo*, pp. 59-67; penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justice Salvador J. Valdez, Jr. and Associate Justice Vicente Q. Roxas.

Respondent Villa Teresa Homeowners Association, Inc. (VTHAI) was the association of the residents and homeowners of the subdivision.

In a letter dated September 2, 1997,[2] VTHAI, through counsel, made known to the petitioner the following complaints and demands, to wit:

> 1.1. Immediate opening of Aureo St. and the closed section of Flora Avenue;
> 1.2. Completion of all fencing at the perimeter of Villa Teresa, including the perimeter fencing along property line from Gate #2 to Sto. Rosario (section of the Flora Avenue) which is being used, against the objection of the residents, as parking for vehicles which constricts the entry and exit to and from the subdivision;
> 1.3. Closure of all openings at the perimeter fence (Pritil gate);
> 1.4. Construction of adequate drainage at Ma. Cristina and along Flora Avenue;
> 1.5. Construction of a Guard House and gate at the 2nd Gate and reimburse the VTHA, Inc. for the costs (sic) construction of a Guard House at 3rd gate;
> 1.6. Completion of all sidewalks;
> 1.7. Development of the open space;
> 1.8. Use of residential lots not for residential purposes (HAU) in clear violation of restrictions in the title;
> 1.9. Plan of HAU to construct an overpass across Flora Ave.;
> 1.10. Severe pruning of all Talisay trees along the perimeter of HAU resulting in the death of several trees. (These trees have been here for about 20 years now)

Allegedly, VTHAI tried to discuss the complaints and demands but the petitioner failed and refused to meet in evident disregard of the latter's obligations as the owner and developer of the project.

In its le tter dated September 22, 1997,[3] the petitioner specifically answered the complaints and demands of VTHAI by explaining thusly:

> 1.1. Opening of Aureo St. and Flora Avenue
>
> Aureo St. and a portion of Flora Avenue have always been part and parcel of the Holy Angel University even before their construction and development of Villa Teresa Subdivision. Said streets have long been turned-over to the University, and were never opened to the public, much less, the residents of Villa Teresa. Hence, for all legal intents and purposes, said streets are not part of the subdivision and are now under the control and supervision of the University.

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2 Id. at 76.
3 Id. at 77-79.

1.2. Completion of Fencing

The whole length of the perimeter fence, especially at the back portion, was already constructed prior to the Mt. Pinatubo eruption. It was only in 1992 that flash floods destroyed a small portion thereof, particularly the lots near the David's residence and Marissa Drive opposite Villa Dolores Subdivision.

Fencing the entrance of Flora Avenue fronting the Jimenez property is a foolish and vindictive way of solving the alleged constricted entry and exit. It will do more harm than good, and result in a legal, if not social and political problem. At most, this is a temporary inconvenience which poses no serious problem.

3. Closure of Openings (Pritil Gate)

Pritil Gate serves as an emergency entry/exit to the subdivision, and is not supposed to be fenced by a concrete wall. Moreover, the adjacent landowner, Rafael Nunag, has threatened to close all our drainage lines passing through his property before it drains to the nearby Matua Creek, if this gate will be fenced. If this happens, water from the upper portion of the subdivision will overflow from the manholes and catch basins, and will flood low lying streets like Aurora Drive and Flora Avenue.

4. Construction of Adequate Drainage

The drainage system designed by Engr. Victor Valencia along Cristina Drive and Flora Avenue has been functioning effectively for thirty (30) years. It was only recently that manholes on low portions of Cristina Drive are slow in absorbing the unusual amount of rain water, but takes only about an hour to fully drain.

5. Construction of Guard House

A guard house was constructed at the Flora Avenue exit, but was transferred by VTHA. As far as reimbursement of costs of guard house at Don Juan Nepomuceno Avenue is concerned, T.G.N. Realty has never agreed to reimburse the same, nor does it intend to.

6. Completion of Sidewalks

All sidewalks of the subdivision were constructed except that portion of Flora Avenue along the open space, because it was leveled by heavy equipments contracted by the VTHA. The gutter along the full frontage of the open space is halved or low, and used by residents as parking for their vehicles. If you will observe, very few people use the sidewalks, especially in this part of the subdivision.

7. Development of the Open Space

Records will show that T.G.N Realty did not advertise nor commit to develop the open space when it opened the subdivision and sold the lots therein. It was never its intention to put up amenities/facilities that some residents are expecting. It may be recalled that T.G.N. Realty provided several playground equipments in the provisional playground near the

Teresa water tank. However, children from nearby barangay Cutcut would climb the fence and play at the park, to the dismay of some residents. Hence, the former officers at VTHA requested T.G.N. Realty to remove these playground equipments and it was agreed that the same be donated to Barangay Cutcut.

8. Use of Residential Lots for Other Purposes

There was no violation of the restrictions when T.G.N. Realty donated the whole Block No. 5 to the Holy Angel University, which is now the site of the school gym. This is a prerogative of the T.G.N. as the owner. Besides, a careful perusal of the titles would readily show that these lots are for educational, and not residential purposes.

9. Plan of HAU to Construct Overpass

We suggest that you direct your request to the school administration as the proper party.

10. Pruning of Trees

T.G.N. Realty has nothing to do with the pruning of Talisay trees around the perimeter of Holy Angel University. However, T.G.N. was informed that the matter has been properly explained to VTHA by the school authorities and that 75 new Mahogany trees were planted to eventually replace 47 live and 14 dead trees.

The truth of the matter is that about two years ago, our client had already dealt with the present officers of VTHA on the control, supervision and maintenance of these facilities, and in fact, a Memorandum of Agreement was prepared for signing by the parties. Among the many conditions that VTHA voluntarily agreed to undertake was payment of realty tax on the road lots and open space, and maintenance and repair of all facilities in the subdivision. A verification with the Office of the City Treasurer, however, revealed that VTHA has been delinquent in the payment of taxes for the past two years.

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In view of the failure and refusal of the petitioner to heed its demands, VTHAI filed with the Housing and Land Use Regulatory Board (HLURB) its complaint for specific performance and for violation of Presidential Decree (P.D.) No. 957 and P.D. No. 1216 on October 17, 1997, docketed as HLURB Case No. REM-CO-03-7-1133.[4]

On December 10, 1997, the petitioner filed its answer with counterclaim,[5] whereby it reiterated the explanations contained in its letter dated September 22, 1997, and urged that the complaint be dismissed. It insisted that it should be granted moral damages of ₱100,000.00 for

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[4] Id. at 68-73.
[5] Id. at 80-86.

discrediting its goodwill, and attorney's fees of ₱30,000.00 plus ₱2,000.00/appearance per hearing because the complaint was malicious.

On September 25, 1998, HLURB Arbiter Jose A. Atencio, Jr. rendered his decision,[6] relevantly holding and ruling thusly:

> To verify the status of development in the subdivision an ocular inspection was conducted on March 13, 1998, and the findings revealed among others that:
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> Background:
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> Villa Teresa Subdivision is a first class subdivision . . .
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> Development Description:
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> Road Network: Per approved plan all roads will be paved with concrete . . . the Aureo and Flora Ave., which is (sic) near the Holy Angel University is (sic) closed to the subdivision residents and allegedly appropriated by the school.
>
> Curbs, Gutters and sidewalk: The curb, gutters and sidewalks were not yet fully completed specially at the side of the open space.
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> Drainage System: . . . Per inspection the subdivision drainage were completed but the canal at the Cristina Ave. were (sic) clogging and the road and some houses were submerged with 1-2 feet of water during rainy season as alleged by the residents at the site. Because the flow of water coming from the Holy Angel University cannot be accommodated in the canal, that's why it goes to the road (sic).
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> Electrical installation: . . . were already completed.
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> Water System: . . . will be provided by a centralized water system. Installation of water pipe (sic) were already completed.
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> Open Space: The designated open space is already operational and a clubhouse is already constructed with a basketball (sic) (which) is on-going construction including the guardhouses and the name of the subdivision (sic). As stated by the members and officer of the association, construction of the basketball court, clubhouse and the name of the subdivision is funded by the Homeowners Assn.
>
> Recommendation: Proper development and maintenance of all subdivision facilities should be undertaken by the owner/developer. And fencing of unfinished perimeter fence especially those leading to the squatter area. Cleaning of clogging canal and help the association in maintaining the subdivision a safe, clean and healthy place to live in (are) the request of the residents.
>
> Based on the allegations in the pleadings and the position papers of the parties the issues to be resolved are whether or not:

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[6] Id. at 203-207.

1.1. Respondent has violated PD 957, otherwise known as subdivision lot and condominium unit buyer protective decree and PD 1216, the law defining open space in a subdivision,

1.2. The parties are liable for damages and the payments of administrative fines, insofar as the respondent is concerned.

As to the first issue.

A perusal of the evidence presented, records of the subdivision, as well as the facts and circumstances obtaining in the case, it cannot be denied that respondent violated Section 22 of PD 957 when it allowed Flora Avenue and Aureo Street which are part of the subdivision to be closed and exclusively appropriated for the use of Holy Angel University.

It likewise violated the same Section when it caused the construction of a gate (Pritil) as the same is part of the perimeter fence of the subdivision,

The transfer of the whole Block 5 under the name of Holy University (sic) and its subsequent conversion into a compound of the said school is an alteration in violation of the above-mentioned Section of PD 957.

Said Section 22 of PD 957 states that:

> Section 22. Alteration of Plans – No owner or developer shall change or alter roads, open space, infrastructures, facilities for public use and/or other form of subdivision developments as contained in the approved subdivision plan and/or represented in its advertisements, without the permission of the Authority (now this Board) and the written conformity or consent of the duly organized homeowners association or in the absence of the latter by the majority of the lot buyers in the subdivision. (Underscoring ours).

And Section 33 of the said decree provides as follows:

> "Section 33. Nullity of waivers – Any condition, stipulation or provision in a contract of Sale whereby any person waives, compliance with any provisions of this Decree or of any rule or regulation issues thereunder shall be void."

The planned construction of an overpass across Flora Avenue without complying with the requirements above-cited is likewise illegal.

Let us now discuss the development and/or construction of the common facilities of the subdivision.

It cannot be denied that the respondent is obliged to complete the construction of the roads drainage and perimeter fence and ". . . other forms of development represented or promised in the brochures, advertisement and other sales propaganda, disseminated by the owner or developer or his agents and the same shall form part of the sales warrants enforceable against said owner or developer, jointly and severally. Failure

to comply with these warranties shall be punishable in accordance with the penalties provided for in this Decree." (Section 19, PD 957).

Respondent is oblige (sic) to construct and maintain the subdivision facilities until proper donation to the city is made. There is no clear proof however that respondent shall construct a guard house at Don Nepomuceno Ave., or reimburse complainant of the cost of its construction.

Maintenance by the respondent is still required despite of its alleged donation of the roads of the subdivision of the City of Angeles because the respondent failed to secure the required Certificate of Completion (COC) as mandated by Rule IV, Section 9 1st Par. of the implementing rules and regulations of P.D. 1216.

Said Section IV, Section 9, 1st paragraph provides, to wit:

> "Section 9 Effects. One the registered owner or developer has secured the Certificate of Completion and has executed a Deed of Donation of road lots and open spaces, he/she shall be deemed relieved of the responsibility of maintaining the roadlots and open space of the subdivision notwithstanding the refusal of the City/Municipality concerned to accept the donation."

Road lots shall include road, sidewalks, alleys and planting strips and its gutters, drainage and sewerage. (Section 4(d), supra.)

As to the second issue. Due to the contained failure and refusal of the respondent to comply with the just and valid demands of the complainant compelling them to hire a lawyer to enforce its rights respondent is liable for the payment of actual damages and attorneys fees.

Likewise, for violating the provisions of PD 957, under Section 38 of the Decree respondent is also liable for administrative fine.

PREMISES considered it is ordered that the respondent shall immediately:

1. Open Aureo St. and the closed Section of Flora Avenue.

2. Complete the perimeter fence of the subdivision

3. Close all opening at the perimeter fence (Pritil Gate)

4. Construct and maintain adequate drainage at Ma. Cristina Drive and along Flora Ave.

5. Construct and maintain all sidewalks, roads and gutters as well as the (maintenance of) open space

6. Cease and desist from using residential lots for non-residential purposes until the requirements of Section 22 of PD 957 shall have been complied with.

> 7. Cease and desist from constructing or allowing to be constructed an overpass across Flora Avenue or any portion of the subdivision until the requirements of Section 22 of PD 957 shall have been complied with.
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> 8. Cease and Desist from pruning trees, particularly the Talisay trees along the perimeter of HAU until the necessary permits have been acquired from the appropriate government agency.
>
> 9. Pay an administrative fine of ₱10,000.00 to this Board for violating Sections 19 and 22 of PD 957.
>
> 10. Pay actual damages in the amount of ₱30,000.00
>
> 11. Pay attorney's fees in the amount of ₱10,000.00
>
> Failure to comply as ordered shall compel this Board to endorse the case to the Provincial Prosecutor for the filing of appropriate criminal case.
>
> SO ORDERED.

By petition for review,[7] the petitioner elevated the adverse decision to the Board of Commissioners of the HLURB (docketed as HLURB Case No. REM-A-990210-0039) based on the following grounds:[8]

> 1.1. That the Honorable Hearing Officer committed grave abuse of discretion when it declared the petitioner has violated provisions of PD 957;
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> 1.2. The Honorable Hearing Officer committed errors in the findings of facts and in conclusions in law when it found the petitioner liable for pruning trees and closing streets and finding that there was no completion yet of the fence and the roads and alleys, and ordering the petitioner to maintain the roads; for attributing to it a cease and desist order from constructing an overpass;
>
> 1.3. The Honorable Hearing officer committed grave abuse of discretion when it ordered the petitioner to pay ₱30,000.00 as and by way of actual damages.

On September 3, 1999, the Board of Commissioners of the HLURB affirmed the HLURB arbiter with modification,[9] *viz.*:[10]

> **WHEREFORE**, the decision of the Office below dated September 25, 1998 is hereby MODIFIED by deleting the directive to pay actual damages, and in lieu thereof, a new directive is hereby entered as follows:

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7 Id. at 210-239.

8 Id. at 211-212.

9 Id. at 258-263; penned by Commissioner Romulo Q. Fabul, and concurred in by Commissioner Joel L. Altea and Commissioner Roque Arrieta Magno.

10 Id. at. 263.

"10. Pay to the complainant the sum of ₱15,000.00 as moderate damages."

All other aspects of the decision dated September 25, 1998 are hereby AFFIRMED.

SO ORDERED.

Ruling of the OP

On October 25, 1999, the petitioner appealed the adverse decision to the OP (docketed as OP Case No. 20-A-8933) on "grounds of errors in the finding of facts and appreciation of evidence and, grave abuse of discretion."[11]

On June 19, 2003, however, the OP, through Sr. Deputy Executive Secretary Waldo Q. Flores, ruled thusly:[12]

This resolves the appeal filed by petitioner-appellant from the Decision of the Board of Commissioners Second Division, Housing and Land Use Regulatory Board dated September 3, 1999, affirming *in toto* the Decision of the Housing and Land Use Arbiter, Atty. Emmanuel T. Pontejos, dated June 23, 1998.[13]

After a careful and thorough evaluation and study of the records of this case, this Office hereby adopts by reference the findings of fact and conclusions of law contained in the HLURB decisions.

A copy of the said HLURB Decision is attached hereto as Annex "A".

WHEREFORE, premises considered, judgment appealed from is hereby **AFFIRMED** *in toto*.

SO ORDERED.

On July 29, 2003, the petitioner moved for reconsideration "on the ground of grave abuse of discretion in merely adopting the findings of facts and conclusions of law of the HLURB decision which amounts to excess of jurisdiction and if not corrected would cause irreparable damage upon the petitioner-appellant."[14]

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[11] Id. at 264.
[12] Id. at 293.
[13] The decision of the HLURB Board of Commissioners dated September 3, 1999 affirmed with modification the decision of HLURB Arbiter Jose A. Atencio, Jr. dated September 25, 1998.
[14] *Rollo*, p. 301.

The OP denied the petitioner's motion for reconsideration on September 10, 2003,[15] stating:

> This refers to the motion of TGN Realty Corporation (TGN) seeking reconsideration of the Decision of this Office dated June 19, 2003, and accordingly prays for the dismissal of the complaint of the private respondent-appellee.
>
> It will be recalled that this Office, in the assailed Decision, dismissed TGN's appeal from the decision of the Housing and Land Use Regulatory Board and affirmed *in toto* the findings of fact and conclusions of law contained in the HLURB decisions. Movant argues that there was a grave abuse of discretion in merely adopting the findings of facts and conclusions of law of the HLURB decision which amounts to excess of jurisdiction and if not corrected would cause irreparable damage upon the petitioner-appellant.
>
> Upon due consideration, this Office finds no cogent reason to disturb its earlier Decision. We have carefully reviewed the arguments raised in the instant motion and find the same to be a mere reiteration of matters previously considered and found to be without merit in the assailed decision. A motion for reconsideration which does not make out "*any new matter sufficiently persuasive to induce modification of judgment will be denied*" (Philippine Commercial and Industrial Bank vs. Escolin, 67 SCRA 202).
>
> **WHEREFORE**, premises considered, the motion for reconsideration is hereby **DENIED.**
>
> **SO ORDERED.**

Decision of the CA

The petitioner then appealed to the CA (CA-G.R. SP No. 79506), urging the review and reversal of the OP's decision on the "ground that there are serious errors in the findings of facts and grave abuse of discretion in the assailed Decision and Order which if not corrected would cause irreparable damage and cause grave legal consequences for the petitioner."[16]

As mentioned, the CA promulgated its assailed decision on August 6, 2004, affirming the OP.[17]

Hence, this appeal by petition for review on *certiorari*.

It is significant to note that even before the Court could act on the petition for review on *certiorari*, the petitioner filed a manifestation on

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[15] Id. at 306.
[16] Id. at 316
[17] Supra, note 1.

October 6, 2004,[18] stating that "in a certificate of completion dated 28 September 2004, the Housing and Land Use Regulatory Board ("HLURB") has duly certified that upon inspection, the subdivision project of the instant case has been completed in accordance with the approved development plan." The petitioner wanted the Court to appreciate the fact that the project had been completed, thereby rendering the demands of VTHAI ventilated in the HLURB as "bereft of any basis in fact and in law."[19] It prayed that the Court should take note of the manifestation, and consider the Certificate of Completion as part of the records of the case, and to render judgment nullifying the adverse decision of the CA and to direct the dismissal of the complaint filed by VTHAI against it (HLURB Case No. REM-CO-03-7-1133).

On November 17, 2004, the Court required VTHAI to comment on the petition for review on *certiorari* (not to file a motion to dismiss); and noted the petitioner's manifestation dated October 6, 2004.[20]

On December 29, 2004, VTHAI filed its comment[21] and a counter-manifestation,[22] both of which were noted on January 24, 2005.[23]

On January 12, 2005, the petitioner moved to strike the comment and counter-manifestation,[24] alleging that such filings were in gross violation of Section 11, Rule 13 of the 1997 *Rules of Civil Procedure*; and that although VTHAI asserted that no inspection had been conducted by the HLURB Regional Office, it did not dispute the genuineness of the Certificate of Completion.

On February 10, 2005, VTHAI opposed the petitioner's motion to strike,[25] countering that the requisite written explanations and affidavits of service had appeared on page 25 of its comment and on page 5 of its counter-manifestation, respectively. VTHAI stressed that no inspection had been conducted by the HLURB Regional Office; that the approved subdivision plan had not been completed; and that the petitioner had not yet complied with the decision of the HLURB Regional Office as of the time of its filing of the opposition to the motion to strike.

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18 *Rollo*, pp. 643-645.
19 Id. at 644.
20 Id. at 649.
21 Id. at 653-676.
22 Id. at 680-684.
23 Id. at 685.
24 Id. at 687-695.
25 Id. at 697-700.

On March 2, 2005,[26] the Court held in abeyance its action on: (1) the petitioner's motion to strike; and (2) VTHAI's comment on and opposition to the petitioner's motion to strike. It reiterated the resolution of January 24, 2005 requiring the petitioner to submit proof of authority of Juan S. Nepomuceno to sign the *conforme* and to clarify if it was only Atty. Lester Cusi or the entire law firm who was withdrawing appearance as counsel.

The petitioner submitted its reply to the comment and opposition on February 24, 2005,[27] its reply to comment on March 4, 2005,[28] and its compliance with the January 24, 2005 resolution on March 16, 2005.[29]

In the meantime, on April 11, 2005, the petitioner submitted its manifestation to the effect that in the compliance dated March 4, 2005, Atty. Cusi clarified that it was his entire law firm that was withdrawing its appearance as counsel.[30]

On June 22, 2005, the Court resolved to: (1) note the manifestation of the Villanueva De Leon Hipolito Law Offices that it had already complied with the resolution of January 24, 2005; (2) deny the petitioner's motion to strike VTHAI's comment on the petition for review on *certiorari* and counter-manifestation; and (3) note VTHAI's opposition to the motion to strike of the petitioner.[31]

On August 30, 2005, the petitioner filed a motion for leave and to admit[32] its reply to comment.[33] On October 17, 2005, the Court denied the petitioner's motion for leave and to admit, noted without action the reply to comment "in view of the denial of the motion to file the same and considering that it would in effect be a second reply as petitioner's earlier reply dated March 4, 2005 had been noted in the resolution of April 25, 2005."[34]

Issues

The petitioner raises the following issues,[35] namely:

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26 Id. at 702.
27 Id. at 703-711.
28 Id. at 743-756.
29 Id. at 758-761.
30 Id. at 764-766.
31 Id. at 780.
32 Id. at 781-783.
33 Id. at 784-797.
34 Id. at 799.
35 Id. at 32-33.

(a)
THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT FAILED TO ORDER THE DISMISSAL OF THE SUBJECT COMPLIANT (sic) DESPITE THE CLEAR SHOWING THAT THE SAID COMPLAINT IS BEREFT OF ANY FACTUAL AND/OR LEGAL BASIS

(b)
THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION WHEN IT SIMPLY AFFIRMED THE DECISION AND ORDER OF THE OFFICE OF THE PRESIDENT DESPITE THE FACT THAT THE SAME WERE ISSUED WITHOUT EVEN EXPLAINING THE FACTS AND LAW UPON WHICH THE SAME WERE BASED.

(c)
THE COURT OF APPEALS GRAVELY ERRED WHEN IT REFUSED TO ORDER THE DISMISSAL OF THE COMPLAINT FILED UNDER HLURB CASE NO. REM-CO-03-7-1133 DESPITE THE FACT THAT THE SAME DID NOT CONTAIN A CERTIFICATION AGAINST FORUM SHOPPING.

(d)
THE COURT OF APPEALS GRAVELY ERRED WHEN IT REFUSED TO ORDER THE DISMISSAL OF THE COMPLAINT FILED UNDER HLURB CASE NO. REM-CO-03-7-1133 DESPITE THE FACT THAT THE SAME WAS FILED WITHOUT ANY AUTHORITY FROM HEREIN RESPONDENT.

Ruling of the Court

The petition for review on *certiorari* is granted.

The issues being raised by the petitioner – that VTHAI did not cite any basis for its demands; that VTHAI did not present any evidence to show that the approved subdivision plan required its demands; that VTHAI did not establish that the petitioner had violated Section 22 of P.D. No. 957; that VTHAI did not present evidence proving that the petitioner was the party responsible for the acts being attributed to it, like the closure of Aureo Street and a section of Flora Avenue, the use of residential lots for other purposes, the proposed construction of an overpass, and the pruning of Talisay trees along the perimeter of the Holy Angel University; and that the petitioner had not complied with its obligations to complete the development of the project – are essentially factual in nature

Ordinarily, the appeal by petition for review on *certiorari* should not involve the consideration and resolution of factual issues. Section 1, Rule 45 of the *Rules of Court* limits the appeal to questions of law because the Court, not being a trier of facts, should not be expected to re-evaluate the

sufficiency of the evidence introduced in the fora below.[36] For this purpose, the distinction between a question of law and a question of fact is well defined. In *Century Iron Works, Inc. v. Banas*,[37] this Court has stated:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the question must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact.
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> Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.

There may be exceptions to the limitation of the review to question of law, such as the following: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the CA's findings are contrary to those by the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[38]

Yet, none of the foregoing exceptions to the limitation applies to this case. As a consequence it seems foregone that the Court would be justified in now rejecting the appeal of the petitioner, and in upholding the CA adversely against the petitioner.

But the attention of the Court has been directed to the conflict in the findings on the state of the development of the project.

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[36] *Carpio v. Sebastian*, G.R. No. 166108, June 16, 2010, 621 SCRA 1.

[37] G.R. No. 184116, June 19, 2013, 699 SCRA 157, 166-167.

[38] *Heirs of Antonio Feraren v. Court of Appeals (Former 12th Division)*, G.R. No. 159328, October 5, 2011, 658 SCRA 569, 574-575.

According to the decision dated September 25, 1998 of the HLURB arbiter, an ocular inspection of the premises was conducted on March 13, 1998 in order to verify the status of the development of the project. It was found at the time that "*proper development and maintenance of all subdivision facilities should be undertaken by the owner/developer. And fencing of unfinished perimeter fence especially those leading to the squatter area. Cleaning of clogging canal and help the association in maintaining the subdivision a safe, clean and healthy place to live in (are) the requests of the residents.*" Being the agency that has acquired the expertise on the matter in question, the HLURB's findings should be respected.[39]

As adverted to earlier, however, the Regional Office of the HLURB meanwhile issued the Certificate of Completion dated September 28, 2004 stating that "*upon inspection, the subdivision project of the instant case has been completed in accordance with the approved development plan.*"[40] The Certificate of Completion is reproduced in full hereinbelow:

CERTIFICATE OF COMPLETION

Name of Project	:	**VILLA TERESA SUBDIVISION**
Location	:	Sto. Rosario; Cutcut, Angeles City
Owner	:	Peter G. Nepomoceno/T.G.N. Realty Corp.
Project Classification	:	PD 957
CR No./Date Issued	:	RS-056/July 14, 1977
LS No./Date Issued	:	LS-0514/July 14, 1977
Area No. of Lots	:	637,335 square meter

BE IT KNOWN that the above-described project upon inspection has been completed in accordance with the approved development plan. Accordingly, upon recommendation of the Inspection Team, said project is hereby certified as completed.

Let it be known further that this office interposes no objection to the donation/turn over of the facilities of the said subdivision project to the Local Government of Angeles City.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of this Board to be affixed at San Fernando City, Pampanga this **28th Day of September 2004.**

(signed)
EDITHA U. BARRAMEDA
Regional Officer[41]

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[39] *Greenhills East Association, Inc. v. E. Ganzon, Inc.*, G.R. No. 169741, January 20, 2010, 610 SCRA 387.

[40] *Rollo*, p. 643.

[41] Id. at 647.

A certificate of completion certifies that a subdivision project has been completed in accordance with the approved development plan. This is clear from Section 8 of the *Rules Implementing Presidential Decree No. 953, pursuant to Article IV, Section 51 of Executive Order No. 648*, to wit:

> Section 8. **ISSUANCE OF CERTIFICATE OF COMPLETION** – No Certificate of Completion (COC) shall be issued by the HLRB unless the subdivision owner/developer complies with the provisions of these Rules and Regulations.

The Certificate of Completion dated September 28, 2004, being the issuance of the HLURB itself, cannot be ignored. Its significance derives from the law itself. Section 31 of Presidential Decree No. 957, as amended by Presidential Decree No. 1216,[42] reads:

> Section 31. Roads, Alleys, Sidewalks and Open spaces. The owner as developer of a subdivision shall provide adequate roads, alleys and sidewalks. For subdivision projects one (1) hectare or more, the owner or developer shall reserve thirty percent (30%) of the gross area for open space. such open space shall have the following standards allocated exclusively for parks, playgrounds and recreational use:
>
> (a) 9% of gross area for high density or social housing (66 to 100 family lot per gross hectare).
>
> (b) 7% of gross area for medium-density or economic housing (21 to 65 family lot per gross hectare).
>
> (c) 3.5 % of gross area low-density or open market housing (20 family lots and below per gross hectare).
>
> These areas reserved for parks, playgrounds and recreational use shall be non-alienable public lands, and non-buildable. The plans of the subdivision project shall include tree planting on such parts of the subdivision as may be designated by the Authority.
>
> **Upon their completion as certified to by the Authority, the roads, alleys, sidewalks and playgrounds shall be donated by the owner or developer to the city or municipality and it shall be mandatory for the local governments to accept provided, however, that the parks and playgrounds may be donated to the Homeowners Association of the project with the consent of the city or municipality concerned. No portion of the parks and playgrounds donated thereafter shall be converted to any other purpose or purposes.** (Bold emphasis supplied)

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[42] DEFINING "OPEN SPACE" IN RESIDENTIAL SUBDIVISIONS AND AMENDING SECTION 31 OF PRESIDENTIAL DECREE NO. 957 REQUIRING SUBDIVISION OWNERS TO PROVIDE ROADS, ALLEYS, SIDEWALKS AND RESERVE OPEN SPACE FOR PARKS OR RECREATIONAL USE.

In this connection, the last paragraph of the Certificate of Completion issued by the HLURB Regional Office reflected as follows:

> Let it be known further that this Office interposes no objection to the donation/ turnover of the facilities of the said subdivision project to the Local Government of Angeles City.

We note, too, that under Section 9 of the *Rules and Regulations Implementing Presidential Decree No. 957, as amended by Presidential Decree No. 1216*, the registered owner or developer of the subdivision who has secured the certificate of completion and has executed the deed of donation in favor of the city or municipality "*shall be deemed relieved of the responsibility of maintaining the road lots and open space of the subdivision notwithstanding the refusal of [the] City/Municipality concerned to accept the donation.*" Moreover, Section 1 (2) of Presidential Decree No. 953[43] specifically states: "*(E)very owner of an existing subdivision shall plant trees in the open spaces required to be reserved for the common use and enjoyment of the owners of the lots therein as well as along all roads and service streets. The subdivision owner shall consult the Bureau of Forest Development as to the appropriate species of trees to be planted and the manner of planting them.*"

The obvious conflict between, on the one hand, the earlier findings made by the HLURB arbiter that undoubtedly became the basis for the HLURB Board of Commissioners, the OP and the CA to successively rule adversely against the petitioner, and, on the other, the recitals to the contrary of the Certificate of Completion issued by the Regional Officer of the HLURB must not be ignored. Justice demands that the conflict be resolved and settled especially considering that the findings and the Certificate of Completion were both issued by the HLURB itself, through its agents.

The resolution and settlement of the conflict require the evaluation and re-evaluation of factual matters. Yet, the Court cannot itself resolve and settle the conflict in this appeal because it is not a trier of facts. Moreover, the proper resolution and just settlement of the conflict will probably require the conduct of a hearing to be conducted by an official or office with the competence to determine the factual dispute involved. That office is the HLURB, the agency of the Government in which the expertise to monitor the completion of subdivision projects has been lodged by law. A remand to the HLURB becomes necessary, therefore, in order that an objective but full inquiry into the level of completion of the improvements in the project can be assured.

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[43] REQUIRING THE PLANTING OF TREES IN CERTAIN PLACES AND PENALIZING UNAUTHORIZED CUTTING, DESTRUCTION, DAMAGING AND INJURING OF CERTAIN TREES, PLANTS AND VEGETATION.

The expertise and competence of the HLURB for the purpose has been aptly expounded in *Peralta v. De Leon*,[44] citing *Maria Luisa Park Association, Inc. v. Almendras*,[45] *viz.*:

> **The provisions of P.D. No. 957 were intended to encompass all questions regarding subdivisions and condominiums.** The intention was aimed at providing for an appropriate government agency, the HLURB, to which all parties aggrieved in the implementation of provisions and the enforcement of contractual rights with respect to said category of real estate may take recourse. The business of developing subdivisions and corporations being imbued with public interest and welfare, any question arising from the exercise of that prerogative should be brought to the HLURB which has the technical know-how on the matter. In the exercise of its powers, the HLURB must commonly interpret and apply contracts and determine the rights of private parties under such contracts. This ancillary power is no longer a uniquely judicial function, exercisable only by the regular courts.

In view of the foregoing, the Court sees no need to dwell at length on and resolve the remaining issues submitted for consideration.

WHEREFORE, the Court **SETS ASIDE** the decision promulgated by the Court of Appeals on August 6, 2004; and **ORDERS** the remand of this case (HLURB Case No. REM-CO-03-7-1133) to the Housing and Land Use Regulatory Board for further proceedings, particularly to determine whether or not the petitioner had already fully complied with the approved development plan for its Villa Teresa Subdivision situated in Sto. Rosario, Cutcut, Angeles City.

No pronouncement on costs of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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[44] G.R. No. 187978, November 24, 2010, 636 SCRA 232, 244.
[45] G.R. No. 171763, June 5, 2009, 588 SCRA 663, 672-673.

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

NOEL G. TIJAM
Associate Justice

ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
MAY 29 2017