

BY: YSA
TIME: 3:30

Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

LEO BERNARDEZ, JR.,
Petitioner,

G.R. No. 197559

Present:

- versus -

PERLAS-BERNABE, S.A.J.,*
HERNANDO,
*Acting Chairperson,***
ZALAMEDA,
ROSARIO, and
MARQUEZ, JJ.

THE CITY GOVERNMENT OF
BAGUIO, HON. BRAULIO
YARANON IN HIS CAPACITY
AS THE CITY MAYOR OF
BAGUIO, THE CITY COUNCIL
OF BAGUIO, THELMA
MANAOIS IN HER CAPACITY
AS THE CITY TREASURER OF
BAGUIO, OSCAR FLORES IN
HIS CAPACITY AS THE CITY
BUILDING OFFICIAL OF
BAGUIO AND THE
SECRETARY OF THE
DEPARTMENT OF PUBLIC
WORKS AND HIGHWAYS,
Respondents.

Promulgated:

MAR 21 2022

X ----- X

DECISION

HERNANDO, J.:

This is a petition for review on *certiorari*¹ under Rule 45 of the Rules of Court seeking to reverse and set aside the January 31, 2011 Decision² and the June 22, 2011 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No.

* On official leave.

** Per Special Order No. 2882 dated March 17, 2022.

¹ *Rollo*, pp. 9-43.

² *Id.* at 45-63. Penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo.

³ *Id.* at 65-66.

109245 which affirmed the May 8, 2009 Decision⁴ of the Regional Trial Court (RTC), Branch 6 of Baguio City, which dismissed the complaint of Leo C. Bernardez, Jr. (petitioner), for declaration of nullity of Administrative Order No. 171, Series of 2004, docketed as Civil Case No. 5935-R, against then Baguio City Mayor Braulio D. Yaranon (Yaranon), the City Treasurer's Office represented by Thelma Manaois, and Acting City Building Official Engr. Oscar Flores (Flores) (collectively, respondents). On June 10, 2005, petitioner amended the said complaint by impleading the Secretary of Department of Public Works and Highways (DPWH).

Factual Antecedents:

On January 1, 2004, the *Sangguniang Panglungsod* of the City Government of Baguio enacted Ordinance No. 01, series of 2004 (Ordinance No. 01) for the appropriation of available funds in the amount of ₱713,579,000.00 for the purpose of reorganization or restructuring of its local departments. Pursuant to Ordinance No. 01, the city mayor of Baguio, Yaranon, issued on September 9, 2004 Administrative Order No. 171, Series of 2004 (AO 171), otherwise known as "An Administrative Order Designating Engineer Oscar V. Flores, City Government Department Head II, City Government of Baguio, as Acting Building Official of the City of Baguio Pending his Appointment of Building Official of the City of Baguio."⁵ The pertinent portions of AO 171 state:

WHEREAS, the City Government of Baguio is implementing a partial reorganization/restructuring which involves five (5) departments as embodied under Ord. #001-04;

WHEREAS, as an offshoot of the partial reorganization, the functions of a Building Official previously assumed by the City Engineer in the Engineering Office has been transferred to the newly created Building and Architecture Office;

WHEREAS, one of the indispensable functions of a Building Official as provided for in PD 1096 otherwise known as the National Building Code of the Philippines and its Implementing Rules and Regulations is the issuance of building permits which at the moment is resulting to a considerable volume of pending applications of building permits in view of the absence of a Building Official;

WHEREAS, there is a need to designate an Acting Building Official who shall be primarily responsible for the enforcement of the provisions of PD 1096 as well as other related law rules and regulations pending the appointment of an officer who shall head the newly created Building and Architecture Office;

⁴ Id. 67-76. Penned by Acting Presiding Judge Antonio M. Esteves.

⁵ Id. at 211.

WHEREAS, the need for a designation of an Acting Building Official is sought in order to meet the exigencies of the service and to provide continuity of operation and smooth processing of building permits in the City of Baguio;

x x x x⁶

Petitioner, being the City Engineer at that time, filed on December 1, 2004, a complaint for declaration of nullity of AO No. 171, Series of 2004 with prayer for issuance of a temporary restraining order and writ of preliminary prohibitory injunction and mandamus before the RTC.⁷ The RTC summarized petitioner's arguments in his complaint as follows:

[Petitioner] assails the validity of [AO No. 171], Series of 2004, designating [Engineer (Engr.)] Oscar Flores as Acting Building Official of Baguio City. It is claimed that the functions adverted to in AO No. 171 usurped and divested [petitioner] of his functions as City Engineer. It alleged that AO No. 171 violates the spirit and intent of the Local Government Code under Article VII, Section 477 paragraph (a) thereof. It is [petitioner's] asseveration that the appointment of an engineer is mandatory for the provincial, city, and municipal governments and that the city and municipal engineer shall also act as the local building official. Moreover, it alleged further that AO No. 171 undermined the security of tenure of the plaintiff as protected by the Civil Service Rules.

Similarly, [petitioner] maintains that Ordinance No. 01-04 is an appropriations bill which cannot contemplate reorganization and restructuring since it is essentially a statute the primary purpose of which is to authorize the release of public funds and did not embrace the Office of the City Engineer nor the creation of the Office of a City Building Official. x x x x Specifically, AO No. 171 is illegal because it violates the provision of the Local Government Code and the ordinance basis thereof did not embrace one subject. There exists a *de jure officer* exercising the functions of a building official. The position of a building official is not a vacant position and the [petitioner] is entitled to the lawful exercise, enjoyment, and use of the Office of the City Engineer who is also the City Building Official.

Finally, [petitioner] avers that the assumption of Engr. Oscar Flores as the City Building Official by virtue of AO No. 171 is a usurpation of the office of the [petitioner] and constitutes oppression and deprivation of [petitioner's] right to office and it cause havoc, confusion, and disorder to the public as a consequent result of two (2) people discharging the same functions and that the same causes the misappropriation, illegal disbursement, and unwarranted use of public funds for illegal purposes.⁸

For their part, respondents averred that AO 171 is a valid act executed by Yaranon to give effect to the restructuring of the local departments of the City Government of Baguio pursuant to Republic Act No. (RA) 7160 or the Local Government Code of 1991 (LGC), as approved by the Department of Budget and Management (DBM) and the Civil Service Commission (CSC), and that the implementation of AO 171 did not result in the termination, diminution of

⁶ Id.

⁷ Id. at 67.

⁸ Id. at 68.

salary, benefits, and rank of petitioner. For its part, the DPWH argued that it had no participation in the enactment of AO 171. Moreover, it is given the authority to enforce the provisions of Presidential Decree No. 1096 or the National Building Code of the Philippines (NBC), which includes the power to appoint Building Officials who shall act as deputy in the enforcement of the provisions of the NBC.⁹

The RTC initially granted the prayer for a temporary restraining order but the same was later lifted. The RTC denied petitioner's application for writ of preliminary mandatory injunction. It also denied petitioner's motion to dismiss.¹⁰

Thereafter, trial ensued.

Ruling of the Regional Trial Court:

In a Decision¹¹ dated May 8, 2009, the RTC dismissed the instant complaint filed by petitioner. The RTC held that the validity of Ordinance No. 01 cannot be a subject of a collateral attack. Since Ordinance No. 01 is valid, the RTC ruled that the AO 171 is also deemed valid.¹²

Moreover, the RTC agreed with the respondents that AO 171 was issued pursuant to the provisions of the LGC which gave the City Mayor of Baguio the power to create other offices as may be necessary to carry out the functions of its office.¹³ In any case, the issue as to the validity or invalidity of AO 171 was rendered moot and academic due to the subsequent appointment of Flores as Department Head of the City Buildings and Architecture Office (CBAO).¹⁴

The RTC also held that petitioner is estopped from questioning the validity of AO 171 since he voluntarily turned over his functions to the CBAO, and desisted from exercising the functions of a Building Official.¹⁵ Moreover, the RTC held that AO 171 did not violate any rights of petitioner. In fact, his security of tenure as City Engineer was respected, and his salary, benefits and privileges of his office were retained.¹⁶

Lastly, the RTC ruled that petitioner is barred from assailing the validity of AO 171 for failure on his part to exhaust administrative remedies, particularly, when he did not raise the issues to the Oversight Committee as mandated by the LGC.¹⁷

⁹ Id. at 68-69.

¹⁰ Id. at 50-51.

¹¹ Id. 67-76.

¹² Id. at 72-73.

¹³ Id. at 74.

¹⁴ Id. at 75-76.

¹⁵ Id. at 75.

¹⁶ Id.

¹⁷ Id. at 75-76.

Ruling of the Court of Appeals:

On January 31, 2011, the CA issued the assailed Decision,¹⁸ the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the instant appeal is **denied**. Accordingly, the Decision of the Regional Trial Court Branch 6 of Baguio City dated May 8, 2009 in Civil Case No. 5935-R is hereby **AFFIRMED**.

SO ORDERED.¹⁹

Citing provisions under the LGC, and the NBC including its implementing rules and regulations (IRR), the CA held that the appointment by the City Mayor of Baguio of a separate and distinct Building Official from its City Engineer is authorized especially since the functions of the local Building Official and City Engineer are distinct and clearly delineated under the NBC.²⁰

The CA also held that Flores' appointment by the Secretary of DPWH was valid under the NBC, and that his designation, albeit temporary, as Building Official was required by the exigencies of the service pursuant to AO 171.²¹

The CA disregarded petitioner's contention that AO 171 is illegal on the premise that it is an inappropriate provision in an appropriation measure. In this regard, the CA countered that the issuance of AO 171 is based on the City Mayor's authority to issue such executive orders for the enforcement and execution of laws and ordinances, which in this case is Ordinance No. 01.²²

The CA also agreed with the findings of the RTC that: (1) the appointment of a separate local Building Official did not adversely affect the salary, benefits, and rank of petitioner;²³ (2) petitioner's complaint should be dismissed due to his failure to exhaust administrative remedies;²⁴ and (3) petitioner is estopped from questioning the legality of AO 171 since he openly admitted his conformity to the reorganization during the budget deliberation hearing.²⁵

Petitioner filed a motion for reconsideration, which was denied by the CA in its June 22, 2011 Resolution.²⁶

¹⁸ Id. at 45-63.

¹⁹ Id. at 62.

²⁰ Id. at 52-58.

²¹ Id. at 58.

²² Id. at 59.

²³ Id. at 59-60.

²⁴ Id. at 60-61.

²⁵ Id. at 61.

²⁶ Id. at 65-66.

Issues:

Petitioner thus filed the instant petition, raising the following issues for resolution:

(A)

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT HELD THAT THE VALIDITY OF ADMINISTRATIVE NO. 171 CAN BE SUSTAINED.

(B)

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT HELD THAT SECTION 477, PARAGRAPH (a) OF THE LOCAL GOVERNMENT CODE STATING THAT THE APPOINTMENT OF AN ENGINEER SHALL BE MANDATORY FOR THE PROVINCIAL, CITY, AND MUNICIPAL GOVERNMENTS AND THAT THE CITY AND MUNICIPAL ENGINEER SHALL ALSO ACT AS THE LOCAL BUILDING OFFICIAL, DOES NOT PROSCRIBE OR PROHIBIT AN APPOINTMENT OF A SEPARATE LOCAL BUILDING OFFICIAL.

(C)

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT HELD THAT UNDER RULE II, SECTION 203 OF THE IMPLEMENTING RULES AND REGULATIONS OF THE NATIONAL BUILDING CODE AN APPOINTMENT OF A SEPARATE BUILDING OFFICIAL IS AUTHORIZED AND THAT THE SECRETARY [OF THE DEPARTMENT] OF PUBLIC WORKS AND HIGHWAYS HAS THE AUTHORITY TO APPOINT A LOCAL BUILDING OFFICIAL.

(D)

THE COURT OF APPEALS ERRED AND GRAVELY ABUSED ITS DISCRETION WHEN IT HELD THAT THE PETITIONER IS IN ESTOPPEL AND THAT HE FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.²⁷

In compliance with this Court's Resolution²⁸ dated September 5, 2011, respondents and respondent Secretary of the DPWH filed their respective comments²⁹ on the petition, to which petitioner filed a consolidated reply.³⁰

Based on the arguments presented to this Court by the parties, the issues presented above may be further refined, thus: whether AO 171 should be nullified for being contrary to law.

²⁷ Id. at 22-23.

²⁸ Id. at 88.

²⁹ Id. at 102-108 and 158-187.

³⁰ Id. at 259-264.

Petitioner's Arguments:

Petitioner argues that AO 171 suffer irregularities in its implementation particularly on the subject of reorganization due to the absence of a legislative act authorizing the City Mayor of Baguio to effect the same pursuant to the provisions of RA 6656³¹ and the 1986 Philippine Constitution. Moreover, petitioner asserts that Ordinance No. 01, from which AO 171 emanates, is an appropriation measure which contains a non-appropriation measure *i.e.*, reorganizing or restructuring of the departments of the City Government of Baguio, which is a violation of Article VI, Section 26 (1) of the 1986 Philippine Constitution.³²

Petitioner also argues that when the CBAO was created pursuant to AO 171 with all the powers and duties of the Building Official, the City Government of Baguio overstepped its powers of local legislation by not making petitioner, as then City Engineer, the head of CBAO contrary to Section 477 of the LGC.³³

With the issuance and implementation of AO 171, petitioner contends that he was, in effect, divested of his powers and duties as the City Engineer and local Building Official of the City Government of Baguio.

Anent Flores' appointment as Building Official by the DPWH Secretary, petitioner argues that the same is not valid since the powers of respondent DPWH Secretary under the NBC do not include the appointment of Building Officials, but is limited only to the designation of Building Officials, and only under certain conditions. Moreover, Flores' appointment as Building Official is illegal since said position was not vacant at that time.³⁴

Moreover, petitioner insists that the assumption of Flores as Building Official deprived him of his official functions and duties as Building Official and has been unlawfully excluded from the use and enjoyment of the office.³⁵

Lastly, petitioner asserts that he need not exhaust administrative remedies before going to court since the instant case involves issues that are purely legal.³⁶

Respondents' Arguments:

For their part, respondents counter that Article VII, Section 477 (a) of the LGC does not prohibit the appointment of a separate Building Official from the

³¹ Entitled "AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION." Approved: June 10, 1988.

³² *Rollo*, pp. 23-25.

³³ *Id.* at 28.

³⁴ *Id.* at 30-33 and 39.

³⁵ *Id.* at 39.

³⁶ *Id.* at 40-42.

City Engineer, and that the same provision must be read in conjunction with Section 205 of the NBC, which provides that the designation of the City Engineer as Building Official is merely provisional in character until such time that a regular position of a Building Official has been created. Moreover, Section 203, Rule II of the NBC allows the appointment of a Building Official separate and distinct from the Office of the City Engineer in all cities.³⁷

Respondents also point out that the appointment of Flores as Acting Building Official under AO 171, and then his subsequent regular appointment as Department Head of the CBAO were all validated and approved by the CSC and DBM. The CSC and DBM also validated his designation by the Secretary of DPWH as acting Building Official.³⁸

In turn, respondent Secretary of the DPWH counters that petitioner's premature invocation of the court's intervention, or his failure to exhaust administrative remedies, renders his complaint without cause of action and should be dismissed on such ground.³⁹

Respondent Secretary of the DPWH also argues that petitioner has no cause of action against him since he did not participate in the issuance of AO 171. Moreover, AO 171 refers to matters concerning the administration of local departments under the City of Baguio, which is clearly beyond the jurisdiction of his office.⁴⁰

Our Ruling

The petition lacks merit.

The subject matter of AO 171 pertains to the *designation* of Flores as *acting* Building Official of the City of Baguio pending the appointment of a Department Head of the newly created CBAO. AO 171 states, in part:

WHEREAS, there is a need to designate an Acting Building Official who shall be primarily responsible for the enforcement of the provisions of PD 1096 as well as other related law rules and regulations pending the appointment of an officer who shall head the newly created Building and Architecture Office;⁴¹

There is no question that the main thrust of petitioner's action is premised on the nullification of AO 171. It is petitioner's belief that AO 171 usurped and divested his functions as the City Engineer of Baguio City. It bears noting, however, that following the issuance and implementation of AO 171, Flores

³⁷ Id. at 104-105.

³⁸ Id. at 105.

³⁹ Id. at 169-174.

⁴⁰ Id. at 175-176.

⁴¹ Id. at 211.

was later appointed as Department Head of the CBAO. With this succeeding appointment of Flores to a new position, it is apparent that AO 171 is no longer operative insofar as his designation as acting Building Official is concerned.

In this regard, well-settled is the rule that “[a] case becomes moot and academic when, by virtue of supervening events, there is no more actual controversy between the parties and no useful purpose can be served in passing upon the merits. Since they are constituted to pass upon substantial rights, courts of justice will not consider questions where no actual interests are involved. As a rule, courts decline jurisdiction over such cases or dismiss them on the ground of mootness.”⁴² With the appointment of Flores as Department Head of CBAO, this Court finds that the issues raised by petitioner in the instant complaint – whether AO 171, and the designation of Flores as acting Building Official by the DPWH pursuant to AO 171, are valid *or* null and void – have become moot. It would be futile for the Court to pass upon the validity or invalidity of AO 171, which, as it stands, is no longer operative.

To the Court’s mind, the mootness as to the issue raised by petitioner in his complaint is all too apparent in his petition since the arguments raised therein have essentially broadened the said issue further to include not only the legality of AO 171, but also the legal infirmities supposedly attendant in the following: (1) reorganization of the local departments of the City of Baguio; (2) the creation of the CBAO; and (3) the appointment of Flores as Department Head of CBAO. These matters, however, are not covered by AO 171.

Strangely, petitioner did not directly challenge the propriety of these matters during the proceedings before the trial court.⁴³ It would thus be improper for the Court to make a pronouncement on their validity since they have not been put into issue in the first place.

If, indeed, petitioner also seeks to strike them down as illegal, he should have prayed for the nullification of the ordinance or administrative orders from which they are based. This the petitioner failed to do. At best, petitioner, in his complaint filed with the RTC, implicitly questioned the impropriety of Ordinance No. 01 (from which AO 171 emanated) by asserting that the said ordinance, while an appropriation measure, contains non-appropriation items such as the reorganization and restructuring of the local departments under the

⁴² *Stradcom Corp. v. Laqui*, 685 Phil. 37, 46 (2012).

⁴³ See *rollo*, p. 69.

City of Baguio, and the creation of the CBAO.⁴⁴ In this regard, we agree with the ruling of the RTC that a collateral attack on Ordinance No. 01 is proscribed, thus:

On this point, well-entrenched in jurisprudence is the rule that the validity of a local ordinance is not subject to a collateral attack (*San Miguel Brewery, Inc. vs. Francisco Magno*, G.R. No. L-21879). As can be gleaned from this case, the validity of City Ordinance No. 01-04 which put in effect Administrative Order No. 171, was never put in issue. Thusly, the validity thereof cannot be disturbed through the instant case and as a consequence thereof, the validity of the Administrative Order implementing the same shall, likewise, be maintained.⁴⁵

We have consistently held that the validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. This is because there is a legal presumption of validity of these laws.⁴⁶ Accordingly, the legal presumption of Ordinance No. 01's validity stands unless the same is annulled in a direct proceeding.

The foregoing notwithstanding, the Court deems it appropriate to look into current state of laws so as to resolve the overarching controversy presented by petitioner in the instant petition – whether there can be a valid appointment of a local Building Official that is separate and distinct from the City or Municipal Engineer.

In this regard, petitioner cites as basis Article VII, Section 477, paragraph (a) of the LGC, which states that:

ARTICLE VII
The Engineer

Section 477. Qualifications, Powers and Duties.

x x x x

The appointment of an engineer shall be mandatory for the provincial, city and municipal governments. **The city and municipal engineer shall also act as the local building official.**

x x x x (Emphasis supplied)

Petitioner contends that the above provision is mandatory such that the LGC only allows for the appointment of a City and Municipal Engineer who shall simultaneously act as the local Building Official. Petitioner thus argues that the City Government of Baguio overstepped its powers of local legislation

⁴⁴ Id. at 68.

⁴⁵ Id. at 72-73.

⁴⁶ *Palencia v. People*, G.R. No. 219560, July 1, 2020, citing *Tan v. Bausch Lomb, Inc.*, 514 Phil. 307, 316 (2005)

2

when it created the CBAO, with all the powers and duties of the Building Official, and when it did not appoint petitioner, as City Engineer, the head of said office.⁴⁷

We disagree. While Section 477 of the LGC states that the City Engineer shall also act as the Building Official, the appointment of a separate Building Official, vis-à-vis the creation of the CBAO in this case, is not without legal basis.

In this regard, pertinent provisions of the LGC provide, to wit:

TITLE ONE. - BASIC PRINCIPLES

CHAPTER 2. - GENERAL POWERS AND ATTRIBUTES OF LOCAL GOVERNMENT UNITS

SECTION 18. *Power to Generate and Apply Resources.* - Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; x x x

x x x x

SECTION 76. *Organizational Structure and Staffing Pattern.* - Every local government unit shall design and implement its own **organizational structure and staffing pattern taking into consideration its service requirements and financial capability**, subject to the minimum standards and guidelines prescribed by the Civil Service Commission.

TITLE THREE. - THE CITY
CHAPTER 2 - CITY OFFICIALS IN GENERAL

SECTION 454. *Officials of the City Government.* (a) There shall be in each city a mayor, a vice-mayor, Sangguniang Panlungsod members, a secretary to the Sangguniang Panlungsod, a city treasurer, a city assessor, a city accountant, a city budget officer, a city planning and development coordinator, a city engineer, a city health officer, a city civil registrar, a city administrator, a city legal officer, a city veterinarian, a city social welfare and development officer, and a city general services officer.

x x x x

- (c) The Sangguniang Panlungsod may:
- (1) Maintain existing offices not mentioned in subsections (a) and (b) hereof;

⁴⁷ Rollo, p. 28.

(2) Create such other offices as may be necessary to carry out the purposes of the city government; or

(3) Consolidate the functions of any office with those of another in the interest of efficiency and economy.

x x x x (Emphasis supplied)

Clearly, from the foregoing provisions, the LGC itself empowers City Governments to implement an organizational structure and create staffing patterns for the effective management and administration of their respective offices. Along the same lines, the LGC also empowers the *Sanguniang Panlungsod* to create, through local ordinances, other offices or consolidate the functions of any office with those of another in the interest of efficiency and economy.

In relation to the foregoing, the appointment of a Building Official separate and distinct from a City Engineer is supported by law pursuant to the IRR of the NBC, specifically:

RULE II – ADMINISTRATION AND ENFORCEMENT

SECTION 203. *General Powers and Functions of the Secretary*

x x x x

6. Appoint a Building Official, **separate and distinct** from the Office of the City/Municipal Engineers in all Cities and Municipalities. (Emphasis supplied)

It is thus within the legislative discretion of the City Government of Baguio to create the CBAO, with all the powers and duties of the Building Official, in line with its purpose of facilitating a more effective delivery of public service.

In fact, the creation of an Office of the City Building Official that is separate and distinct from the Office of the City Engineer is not novel to City Governments. The Court is aware that highly urbanized cities (HUC), such as Manila, Parañaque, Caloocan, Quezon, Davao, and Iloilo, have created and established their respective offices of the City Building Official separate and distinct from the Office of the City Engineer. This is mainly in response to operational difficulties attendant to the demands of the dual positions of City Engineer and Building Official concurrently held by one person *i.e.*, the City Engineer.⁴⁸

⁴⁸ *Office of the Building Official now a distinct city gov't office*, February 10, 2020 <https://www.panaynews.net/office-of-the-building-official-now-a-distinct-city-govt-office/> (visited March 10, 2022). *Office of the City Building Official*, undated <<https://www.davaocity.gov.ph/departments/infrastructure/office-of-the-building-official/>> (visited March 10, 2022). *Executive Order No. 26, Series of 2011*, May 23, 2011 <<https://records.davaocity.gov.ph/wp-content/uploads/2021/08/EO-26-s.-2011.pdf>> (visited March 10, 2022).

Moreover, the appointment of a Building Official separate and distinct from a City Engineer is practicable in light of the fact that their functions are delineated under the IRR of the NBC, and LGC, respectively. Particularly, under Section 207 of the IRR of the NBC, the duties of the Building Official are, as follows:

SECTION 207. *Duties of the Building Official* - The Building Official shall have the following duties:

1. Be primarily responsible for the enforcement of the provisions of the Code and its IRR, as well as circulars, memoranda, opinions and decisions/orders issued pursuant thereto. His actions shall always be guided by appropriate orders/directives from the Secretary.
2. Have overall administrative control and/or supervision over all works pertinent to buildings/structures in his area of responsibility and shall be charged with the processing of all permit applications and certificates as well as the issuance of the same.
3. Ensure that all changes, modifications, and alterations in the design plans during the construction phase shall not start until the modified design plan has been evaluated and the necessary amendatory permit issued.
4. Undertake annual inspections of all buildings/structures and keep an up-to-date record of their status.

Meanwhile, the powers and duties of the City Engineer are enumerated in Section 477 of the LGC, which states:

SECTION 477. *Qualifications, Powers and Duties.* - x x x x

(b) The engineer shall take charge of the engineering office and shall:

- (1) Initiate, review and recommend changes in policies and objectives, plans and programs, techniques, procedures and practices in infrastructure development and public works in general of the local government unit concerned;
 - (2) Advise the governor or mayor, as the case may be, on infrastructure, public works, and other engineering matters;
 - (3) Administer, coordinate, supervise, and control the construction, maintenance, improvement, and repair of roads, bridges, and other engineering and public works projects of the local government unit concerned;
 - (4) Provide engineering services to the local government unit concerned, including investigation and survey, engineering designs, feasibility studies, and project management;
 - (5) In the case of the provincial engineer, exercise technical supervision over all engineering offices of component cities and municipalities; and
- (c) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

In other words, the local Building Official, on one hand, is responsible for the enforcement of the provisions of the NBC. As such, he is responsible for issuing building permits and ensuring compliance with the requirements of the NBC. Moreover, the Building Official is subject to the supervision and control of the national authority, in this case, the Secretary of DPWH.⁴⁹ On the other hand, the City Engineer is responsible for the infrastructure, public works, and engineering matters *within* a local government unit.⁵⁰ Clearly, these are two separate positions, which can be independently exercised by different local officials or offices, more so under circumstances when there is a need to address the operational demands of the City Government in matters concerning construction and infrastructure, such as in this case.

At this point, this Court observes that in his petition, petitioner not only seeks to have AO 171 nullified, but also wants this Court to pass judgment on the following: (1) that the LGC has repealed certain provisions under the NBC such that the authority of the DPWH Secretary to appoint Building Officials has been revoked; and (2) that the IRR of the NBC has unduly increased the powers and functions of the DPWH to include the appointment of a local Building Official. In essence, petitioner questions the validity of various provisions of law which gives the Secretary of the DPWH the authority to appoint Building Officials.

As early as 1990, the Court En Banc, in *Tapay v. Cruz*⁵¹ (*Cruz*), recognized the authority of the Secretary of Public Works and Highways to appoint Building Officials. Specifically, it adopted the opinion of then Secretary of Justice Sedfrey Ordoñez where he expressed that:

As to the issue of who has power to appoint Building Officials for the Metro Manila area, it is our view that the same is vested solely in the Secretary of Public Works and Highways as a corollary to his power to enforce and administer P.D. No. 1096. In Opinion No. 44, s. 1979, we ruled that Building Officials who are the deputies of the Secretary of Public Works and Highways in the enforcement of the National Building Code in their respective areas of jurisdiction (Section 205, P.D. No. 1096) are national officials because they exercise a function of national concern (see also Op. No. 92, s. 1983). As national officials, their appointment should be the prerogative of the Secretary of Public Works and Highways, who is also the official expressly authorized by law to designate incumbent Public Works District Engineers, City Engineers and Municipal Engineers, to act as Building Officials in their respective areas of jurisdiction in the meantime that regular positions of Building Officials have not been provided for (Sec. 205, P.D. No. 1096).

X X X X

As previously stated, the administration and enforcement of the provisions of the National Building Code is the primary concern of the national government, the said function being vested in the Secretary of Public Works and

⁴⁹ See *Tapay v. Cruz*, 264 Phil. 850 (1990).

⁵⁰ *Rollo*, p. 182.

⁵¹ *Tapay v. Cruz*, supra note 49.

Highways (Sec. 201, Code), a national official. Since a Building Official assigned to a province, city or municipality is the deputy of the Secretary of Public Works and Highways in the enforcement of the provisions of the National Building Code, he is deemed to be a national official notwithstanding that his salary is paid out of local funds.

In view of the foregoing, we reiterate the view that the authority to administer and enforce the provisions of the National Building Code, and the power to appoint Building Officials, throughout the country, including Metro Manila, pertain to the Secretary of Public Works and Highways and to no other official.

x x x x⁵²

We thus held in *Cruz* that the authority to administer and enforce the provisions of the NBC and the power to appoint Building Officials throughout the country pertain to the Secretary of Public Works and Highways and to no other official.⁵³

In any case, we reiterate that a collateral attack on a presumably valid law cannot be countenanced more so in this case where, in his complaint filed before the RTC, petitioner's main thrust rests solely on the nullification of AO 171. Besides, it is a rule in statutory construction that "a statute should be construed not only to be consistent with itself but also to harmonize with other laws on the same subject matter, as to form a complete, coherent and intelligible system. This principle is consistent with the maxim, *interpretare et concordare leges legibus est optimus interpretandi modus* or every statute must be so construed and harmonized with other statutes as to form a uniform system of jurisprudence."⁵⁴ As this Court held in *Dreamwork Construction, Inc. v. Janiola*,⁵⁵ "every effort must be made to harmonize seemingly conflicting laws. It is only when harmonization is impossible that resort must be made to choosing which law to apply."⁵⁶

Applying the foregoing principles to the case at bench, this Court holds that while city or municipal engineers shall also act as local building officials of their respective cities or municipalities, it is still within the legislative discretion of city or municipal governments to create and organize the office of the local Building Official separate and distinct from the Office of the City Engineer pursuant to and in accordance with the provisions and limitations set by law, particularly the LGC and NBC, including their respective IRRs.

WHEREFORE, the petition is **DENIED**. The January 31, 2011 Decision and the June 22, 2011 Resolution of the Court of Appeals in CA-G.R. SP 109245 are hereby **AFFIRMED**.

⁵² Id. at 855-856.

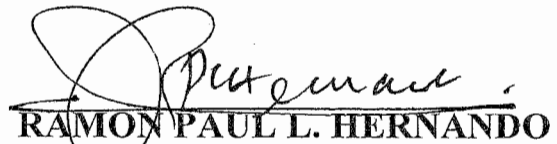
⁵³ Id. at 860.

⁵⁴ *Dreamwork Construction, Inc. v. Janiola*, 609 Phil. 245, 254 (2009).

⁵⁵ Id.

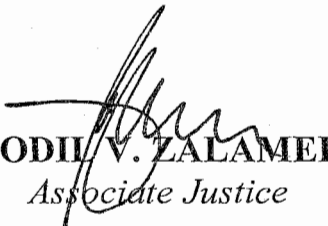
⁵⁶ Id.

SO ORDERED.

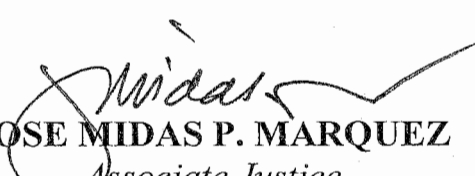

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

On official leave.
ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


RODIL V. ZALAMEDA
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice

ATTESTATION

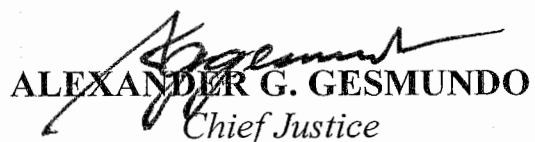
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting 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.



ALEXANDER G. GESMUNDO
Chief Justice