



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ARTEX DEVELOPMENT CO., INC. ,
Petitioner,

G.R. No. 203538

Present:

CARPIO, *Chairperson*,
BRION,
DEL CASTILLO,*
MENDOZA, and
LEONEN, *JJ.*

- versus -

OFFICE OF THE OMBUDSMAN, ATTY.
MARISSA E. TIMONES, ERLINDA O.
MARTEJA, ELIMAR N. JOSE, and ATTY.
LUIS Y. DEL MUNDO, JR.,
Respondents.

Promulgated:

27 JUN 2016

X-----X

DECISION

BRION, J.:

We resolve the petition for *certiorari*¹ assailing the May 30, 2011 resolution² and the December 28, 2011 order³ of the Office of the Ombudsman in Case No. OMB-C-C-10-0199-E.

Factual Antecedents

On April 14, 2010, petitioner Artex Development, Co. Inc. (*Artex*) filed a complaint⁴ with the Ombudsman against the respondent public officers of the City of Manila, namely: Atty. Marissa E. Timones (*Register*

* On Leave.

¹ *Rollo*, pp. 3-67. The petition is filed under Rule 65 of the Rules of Court.

² Id. at 68-94. *Graft Investigation Officer* I Ma. Lucida Kristine R. Flores drafted and Overall Deputy Ombudsman Orlando C. Casimiro approved the assailed resolutions.

³ Id. at 95-114.

⁴ Id. at 115-123. The complaint-affidavit was attested to by Artex's representative Jeoffrey Trevor C. Typoco.

of Deeds), Atty. Luis Y. Del Mundo, Jr. (*Legal Officer*), Erlinda O. Marteja (*Chairman, Auction Committee – Office of the City Treasurer*) and Elimar N. Jose (*Member-Secretary, Auction Committee – Office of the City Treasurer*).

Artex alleged that it owns two parcels of land with a total area of 451.20 square meters located in Binondo, Manila⁵ (covered by Transfer Certificate of Title (*TCT*) No. 127247⁶), an eight-storey building, and machineries found thereon.⁷ The parcels of land, building, and machineries (*properties*) had an appraised value of Php99,778,000.00 as of June 20, 2009.⁸

For failure to pay real estate taxes, the Office of the City Treasurer of Manila issued *warrants of levy* on the properties on November 26, 2007, and May 29, 2008.⁹

Artex claimed that the respondents, in conspiracy with one another, violated relevant laws and regulations in the conduct of the auction sale and in the issuance of a new title to the winning bidder, V.N. International Development Corporation (*VN*).¹⁰

Artex argued that the following facts prove that the respondents conspired to give undue benefits to VN: (1) the unconscionably low bid for the properties (*Php9,637,219.81*); (2) the unjustified refusal of the respondents to entertain Artex's attempts to redeem; (3) their overtures to ask for money;¹¹ and (4) their requirement for Artex to produce documents that are not necessary for the redemption such as proofs of extension of its corporate term, cancellation of the mortgage on the properties, and proof that the taxes had been paid.¹²

In detail, Artex claimed that its representatives went to the respondents' office on June 30, 2008, to redeem the property. The respondents refused to accept the payment on the ground that the *community tax certificate* (*CTC*) attached to the *corporate secretary's certificate* authorizing them to redeem was purportedly a fake.¹³ Respondent Jose allegedly also told them: "*Sabihin [n'yo] sa boss [n'yo], huwag na i-redeem. Ibenta na lang sa bidder para di na siya mahirapan, at ako lang ang kakausapin tungkol dito.*"¹⁴

Artex also claimed that pursuant to the respondents' unnecessary demands, it had to extend its corporate term and secure the cancellation of

⁵ Id. at 116.

⁶ Id. at 126-130.

⁷ Id. at 17, 131-132.

⁸ Id. at 117, 133-145.

⁹ Id. at 117.

¹⁰ Id. at 115-123.

¹¹ Id. at 117-118.

¹² Id. at 118-119.

¹³ Id. at 71.

¹⁴ Id. at 119.

the mortgage on the properties.¹⁵ However, respondents Jose and Marteja still issued a *certificate of non-redemption* on June 15, 2009, although Artex had one year from the registration of the auction sale, or until July 29, 2009, within which to redeem.¹⁶

Artex further alleged that respondent Register of Deeds, Atty. Timones, in conspiracy with the other respondents, made it appear that TCT No. 127247 was missing ten days before the expiration of the redemption period, and issued the new TCT in favor of VN despite the absence of a final deed of conveyance.¹⁷

Notably, the Office of the City Legal Officer of Manila manifested in a land registration case pending with the Regional Trial Court that the issuance of the *certificate of non-redemption* was unauthorized because it was not signed by Assistant City Treasurer Vicky R. Valientes; and that it had in fact issued the *certificate of redemption* in favor of Artex on July 29, 2009.¹⁸

In sum, Artex argued that the respondents had no real intention of allowing the redemption and were actuated by a common sinister and malicious desire to secure for VN a title over the properties.¹⁹ Artex thus urged the Ombudsman to prosecute the respondents for violation of Section 3(e) of Republic Act No. (RA) 3019 or the *Anti-Graft and Corrupt Practices Act*.²⁰

In defense, respondents Marteja and Jose of the Office of the City Treasurer contended that the amount paid by the winning bidder was not unconscionable because it was based on the amount of delinquent taxes and not on the market value of the properties;²¹ that Artex's representatives failed to present any payment for redemption when asked to do so;²² that Artex did not join the auction sale despite having been advised to do so;²³ that Artex's failure to redeem the property was a result of its own negligence; and that they (the respondents) had the ministerial duty to issue the *certificate of non-redemption* after the lapse of the period of redemption, which is one year from the date of the sale, or until May 29, 2009.²⁴

For his part, respondent Atty. Del Mundo Jr. of the City Legal Office claimed that he was not a member of the auction committee; that he had nothing to do with the cancellation of Artex's TCT and the issuance of the new TCT to VN; that he never asked for money from Artex; that he had the duty as the City Legal Officer to verify the genuineness of Artex's CTC; and

¹⁵ Id. at 119.

¹⁶ Id. at 120.

¹⁷ Id. at 121-122, citing Section 262 of the Local Government Code (Republic Act No. 7160).

¹⁸ Id. at 72-73.

¹⁹ Id. at 119-120.

²⁰ Id. at 123.

²¹ Id. at 74.

²² Id. at 74.

²³ Id. at 74-76.

²⁴ Id. at 76.

that Artex had in fact not been paying business taxes, fees, and other charges for more than 14 years.²⁵

For her part, Register of Deeds Atty. Timones denied that her office issued the *certification* that Artex's TCT was missing to prevent it from redeeming the properties; she argued that the task of checking the existence of the TCT rests with the Records Office; that the issuance of a certified true copy of Artex's TCT is not required in the redemption of the properties; that the alleged questionable date of the issuance of the new TCT in favor of VN (the day immediately following the last day for redemption) did not pertain to the issuance of the TCT but to the date of entry of VN's consolidated ownership over the properties; and that it was her ministerial duty as Register of Deeds to record VN's consolidated ownership even without the final deed of conveyance, which is merely a formality.²⁶

The Findings of the Ombudsman

The Ombudsman **dismissed** the complaint and held that there was **no sufficient basis** to prosecute the respondents for violation of Section 3(e) of RA 3019,²⁷ which reads:

Section 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x.

Citing jurisprudence, the Ombudsman held that violation under Section 3(e) of RA 3019 requires proof of the following acts:

²⁵ Id. at 76-77.

²⁶ Id. at 79-80.

²⁷ Id. at 92. The dispositive portion of the resolution reads:

WHEREFORE, premises considered, the Complaint filed against respondents ATTY. MARISSA E. TIMONES, ERLINDA O. MARTEJA, ELIMAR N. JOSE, ATTY. LUIS Y. DEL MUNDO, JR. for violation of Section 3(e) of R.A. 3019, as amended, is hereby **DISMISSED** for lack of sufficient basis.

SO ORDERED.

1. The accused is a public officer discharging administrative or official functions or private persons charged in conspiracy with them;
2. The public officer committed the prohibited act during the performance of his official duty or in relation to his public position;
3. The public officer acted with manifest partiality, evident bad faith, or gross, inexcusable negligence; and
4. His action caused undue injury to the Government or any private party, or gave any party any unwarranted benefit, advantage, or preference to such parties.²⁸

The Ombudsman found that: (1) the supporting documents attached to the complaint failed to establish *prima facie* that the respondents violated Section 3(e) of RA 3019; and (2) that the respondents sufficiently explained that they acted in the regular performance of their duties. The Ombudsman submitted the reasons outlined below.²⁹

First, the bid amount cannot be characterized as grossly unconscionable.

Under Section 260 of the Local Government Code, the local treasurer has the duty to publicly advertise for sale or auction the property to satisfy the *tax delinquency* and the expenses of the sale, and that at any time before the scheduled date for the sale, the owner of the property may stay the proceeding by paying the *delinquent tax*, interest and expenses of the sale.³⁰ Also, the City of Manila's *Rules, Regulations and Conditions of the Auction Sale* provides that the bidder who offers to pay the highest purchase price from which the *total amount of delinquent taxes*, penalties, and cost of sale due could be satisfied shall be entitled to the award of the property.

²⁸ *Quibal v. Sandiganbayan*, 314 Phil. 66, 75-76 (1995).

²⁹ *Rollo*, p. 82.

³⁰ Section 260. *Advertisement and Sale*. - Within thirty (30) days after service of the warrant of levy, the local treasurer shall proceed to publicly advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the tax delinquency and expenses of sale. The advertisement shall be effected by posting a notice at the main entrance of the provincial, city or municipal building, and in a publicly accessible and conspicuous place in the barangay where the real property is located, and by publication once a week for two (2) weeks in a newspaper of general circulation in the province, city or municipality where the property is located. The advertisement shall specify the amount of the delinquent tax, the interest due thereon and expenses of sale, the date and place of sale, the name of the owner of the real property or person having legal interest therein, and a description of the property to be sold. At any time before the date fixed for the sale, the owner of the real property or person having legal interest therein may stay the proceedings by paying the delinquent tax, the interest due thereon and the expenses of sale. The sale shall be held either at the main entrance of the provincial, city or municipal building, or on the property to be sold, or at any other place as specified in the notice of the sale.

Within thirty (30) days after the sale, the local treasurer or his deputy shall make a report of the sale to the sanggunian concerned, and which shall form part of his records. The local treasurer shall likewise prepare and deliver to the purchaser a certificate of sale which shall contain the name of the purchaser, a description of the property sold, the amount of the delinquent tax, the interest due thereon, the expenses of sale and a brief description of the proceedings: Provided, however, That proceeds of the sale in excess of the delinquent tax, the interest due thereon, and the expenses of sale shall be remitted to the owner of the real property or person having legal interest therein. xxx

Thus, the benchmark for the minimum bid is not the fair market value of the properties but only the amount of the delinquent taxes, plus interests and expenses of the sale.³¹

Besides, where there is a right to redeem, inadequacy of the price is immaterial because the debtor may re-acquire the property or sell his right to redeem and thus, recover any loss he claims to have suffered by reason of the price obtained at the public sale.³²

Second, Atty. Del Mundo did not prevent Artex from exercising its right of redemption when he questioned the validity of the latter's CTC. As a City Legal Officer, he merely applied the requirements of Section 163 of the Local Government Code, which requires that a CTC must be presented when a corporation subject to community tax pays any tax or fee. As it turned out, Artex's CTC was not among those officially allotted by the Bureau of Internal Revenue to the City of Manila, *i.e.*, it was not genuine.³³

Third, Atty. Del Mundo's challenge against Artex's CTC did not make it legally impossible for the latter to redeem the properties. Artex could have tendered its payment to the Office of the City Treasurer if the respondents refused to accept the payment on account of the alleged fake CTC. Indeed, Artex could have consigned it with the court if it was really ready to pay and redeem the properties.³⁴

Fourth, there is no evidence to prove that the respondents expressed overtures at asking for money in exchange for their assistance to Artex. There is also no evidence to support the allegation that Jose and Marteja unfairly required Artex to submit documents which appear to have benefited VN.³⁵ Besides, Artex's corporate existence was *about to expire*, and thus, it needed to extend its corporate life to have the legal capacity to redeem the properties.³⁶

Fifth, respondents Jose and Marteja had basis to issue the *certificate of non-redemption* on June 15, 2009, notwithstanding that the City of Manila later gave Artex until June 29, 2009, within which to redeem the properties.³⁷ Section 261 of the Local Government Code, provides among others, that *within one year from the date of the sale*, the owner of the delinquent property shall have the right to redeem the property upon payment of the amount of the delinquent tax. The same provision is found in the City of Manila's *Rules, Regulations and Conditions of the Auction Sale*.³⁸

³¹ Rollo, p. 83.

³² Id. at 83-84, citing *Development Bank of the Philippines v. Vda. De Moll*, 150 Phil. 101 (1972).

³³ Id. at 85.

³⁴ Id. at 86.

³⁵ Id. at 86-87.

³⁶ Id. at 87.

³⁷ Id. at 88.

³⁸ Id. at 89.

The auction was held on May 29, 2008, thus, Artex only had until May 29, 2009, within which to redeem the properties. Hence, the *certificate of non-redemption* issued on June 15, 2009, was not premature.

Sixth, the allegations against the Register of Deeds Atty. Timones were unsubstantiated, speculative, and conjectural. She could not be charged criminally for having simply “noted” the *certification* that Artex’s CTC was missing, which was prepared and signed by the records officer.³⁹

Seventh, the alleged lack of final deed of conveyance in favor of VN is insufficient to criminally charge Atty. Timones. The final deed of conveyance is a mere formality to confirm the title already vested in VN. Its absence cannot operate to restore whatever rights Artex has forfeited in view of its failure to redeem the properties on time.⁴⁰ Further, Atty. Timones explained that she registered VN’s title over the properties on the basis of the *consolidation of ownership* presented to her office after Artex’s right of redemption had lapsed.⁴¹

In sum, the Ombudsman held that public officers are presumed to have acted in good faith in the performance of their duties. Their mistakes are not actionable in the absence of any clear showing that they were motivated by malice or gross negligence that amounted to bad faith. Bad faith does not only connote bad moral judgment or negligence, there must be some dishonest purpose or some moral deviation and conscious doing of a wrong, a breach of a sworn duty through some motive of intent or good will.⁴²

Here, Artex failed to prove *prima facie* that the respondents acted with malice or bad faith in the performance of their official functions.

Artex moved to obtain reconsideration on the ground that only *probable cause* is required to warrant the filing of a criminal case and not a *prima facie* case.⁴³

The Ombudsman denied Artex’s motion for reconsideration on the same grounds discussed above⁴⁴ and explained that nowhere in its assailed resolution did it require Artex to prove *prima facie* its case against the respondents.⁴⁵ It clarified that what the assailed resolution stated was that Artex’s pieces of evidence were scarce to establish *prima facie* that the

³⁹ Id. at 90.

⁴⁰ Id. at 90.

⁴¹ Id. at 90-91.

⁴² Id. at 91-92. Citations omitted.

⁴³ Id. at 96.

⁴⁴ Id. at 95-113. The dispositive portion reads:

WHEREFORE, for the foregoing reasons, the *Motion for Reconsideration* dated October 22, 2011 filed by complainant ARTEX is hereby **DENIED** for lack of merit.

SO ORDERED.

⁴⁵ Id. at 96-97.

respondents have violated Section 3(e) of RA 3019. In simpler terms, Artex failed to show *prima facie* that a crime has been committed and that the respondents are probably guilty and should be held for trial.⁴⁶

Artex thus came to this court for relief via a petition for *certiorari* under Rule 65 of the Rules of Court.

The Petition

Artex argues that the Ombudsman gravely abused its discretion when it grossly misapprehended the facts and evidence on record.⁴⁷ It submits that the respondents acted with manifest bad faith and partiality when they premeditatedly and unjustifiably refused and delayed Artex's redemption of the properties. The issue is not what Artex could or should have done to redeem the properties but whether the respondents committed manifest bias, evident bad faith, and gross inexcusable negligence in delaying and preventing Artex from exercising its right of redemption.⁴⁸

Artex also argues that the Ombudsman grossly erred when it treated the respondents' acts in isolation. The Ombudsman should have realized that the respondents' actions, taken as a whole, were part of their common design to willfully refuse the redemption of the properties. To illustrate, five days after they required Artex to extend its corporate life, the respondents again refused their plea for redemption on the ground that the CTC was invalid.⁴⁹

Artex reasserts that it did not have to extend its corporate life. When its representatives attempted to redeem the properties between June and July 2008, it had full legal capacity because its term was to expire only in December 2008.⁵⁰ Further, the respondents should have directed its representatives to secure a valid CTC instead of denying the redemption outright. The respondents' failure to instruct its representatives to secure a valid CTC and their requirement to extend its corporate life was motivated by a sinister design to prevent the redemption of the properties.⁵¹

Further, Artex tendered payment for purposes of redeeming the properties.⁵² Its representatives were armed with a secretary's certificate (authorizing them to redeem the properties) and manager's checks to cover the redemption price but the respondents questioned the validity of the secretary's certificate on the ground that the CTC was fake.⁵³

⁴⁶ Id. at 97.

⁴⁷ Id. at 30-60.

⁴⁸ Id. at 31-32.

⁴⁹ Id. at 33.

⁵⁰ Id. at 36.

⁵¹ Id. at 32-33.

⁵² Id. at 38-40.

⁵³ Id. at 40-42.

Finally, Artex points out that the Ombudsman eluded any discussion of the following facts that would show that the respondents conspired to give undue benefit to VN: (1) the unauthorized issuance of the certificate of non-redemption;⁵⁴ (2) the issuance of a new TCT in favor of VN without the required final deed of conveyance;⁵⁵ (3) the finding of the City of Manila in an administrative case filed against the respondents that there was a common intention to prevent Artex from redeeming the properties;⁵⁶ (4) the respondents' intimations to ask money;⁵⁷ and (5) the respondents' requirement for Artex to submit unnecessary documents.⁵⁸

The Comments

The Ombudsman, through the Office of the Solicitor General, maintains that it did not gravely abuse its discretion⁵⁹ when it dismissed the complaint for lack of probable cause.⁶⁰ Contrary to Artex's claim, it did not require a higher quantum of evidence. It used the term *prima facie* merely to describe that the complaint "on its face" or "at first sight" failed to prove the existence of probable cause. The term was not a reference to the quantum of evidence required but a description of the scarcity of Artex's evidence. The Ombudsman also restates the grounds discussed above for dismissing the complaint.⁶¹

On their part, the respondent public officers argue that probable cause cannot be established by mere suggestion or speculation; otherwise, our criminal justice system would be exposed to abuse. They maintain that they were merely performing their official functions when they questioned the validity of Artex's payment and CTC.⁶² They also underscore that Artex raised question of facts, which the Court, not being a trier of facts, normally does not resolve.⁶³

Issue

The sole issue is whether the Ombudsman gravely abused its discretion when it dismissed Artex's complaint against the respondents.

Our Ruling

We **dismiss** the petition for lack of merit.

⁵⁴ Id. at 42-44.

⁵⁵ Id. at 44-45.

⁵⁶ Id. at 45-49.

⁵⁷ Id. at 49-50.

⁵⁸ Id. at 50-51.

⁵⁹ Id. at 405-422. Comment dated June 18, 2013.

⁶⁰ Id. at 410-412.

⁶¹ Id. at 413-419.

⁶² Id. at 386-395. (Comment/Opposition dated March 7, 2013 filed by respondents Marteja and Jose).

⁶³ Id. at 457-461. (Comment dated January 2, 2014 filed by respondent Atty. Del Mundo, Jr.).

As a rule, the Court does not interfere with the Ombudsman's exercise of its investigative and prosecutorial powers without good and compelling reasons.⁶⁴ We must stress that *certiorari* is an extraordinary prerogative writ that is never demandable as a matter of right. It is meant to correct only errors of jurisdiction and not errors of judgment committed in the exercise of the discretion of a tribunal or an officer. This is especially true in the exercise by the Ombudsman of its constitutionally mandated powers. Thus, we have consistently maintained our policy of non-interference in the Ombudsman's exercise of its investigatory and prosecutorial powers.⁶⁵

Further, the burden of proof to show grave abuse of discretion in a petition for *certiorari* rests with the petitioner. Artex failed to discharge this burden. Thus, we dismiss the present petition.

We elaborate on our reasons for dismissing the petition in the following discussion.

First, the Court cannot and will not nullify the Ombudsman's factual findings on the sole ground that the complainant does not agree with such findings.

Artex points to the Ombudsman's alleged gross misapprehension of facts, which led to its erroneous conclusion that there is no probable cause to prosecute the respondents for violation of Section 3(e) of RA 3019. To confirm whether there is truth to this allegation, Artex asks us to pass upon the Ombudsman's factual findings. As correctly pointed out by the respondents, we do not normally perform this task because this Court is not a trier of facts.

We must remember that the Ombudsman resolved not to prosecute the respondents after conducting a preliminary investigation.⁶⁶ The *Rules of Procedure of the Office of the Ombudsman*, specifically Section 2 of Rule 2, states:

Evaluation – Upon evaluating the complaint, the investigating officer shall recommend whether it may be: a) dismissed outright for want of palpable merit; b) referred to respondent for comment; c) indorsed to the proper government office or agency which has jurisdiction over the case; d)

⁶⁴ *Judge Angeles v. Ombudsman Gutierrez*, 685 Phil. 183, 193 (2012).

⁶⁵ *Id.* citing *Kalalo v. Office of the Ombudsman*, G.R. No. 158189, 23 April 2010, 619 SCRA 141; *ABS-CBN Broadcasting Corporation v. Office of the Ombudsman*, G.R. No. 133347, 23 April 2010, 619 SCRA 130; *De Guzman v. Gonzalez*, G.R. No. 158104, 26 March 2010, 616 SCRA 546; *People of the Philippines v. Castillo*, G.R. No. 171188, 19 June 2009, 590 SCRA 95; *Presidential Commission on Good Government v. Desierto*, G.R. No. 139296, 23 November 2007, 538 SCRA 207; *Acuña v. Deputy Ombudsman for Luzon*, 490 Phil. 640 (2005); *Andres v. Cuevas*, 499 Phil. 36 (2005); *Reyes v. Hon. Atienza*, 507 Phil. 653 (2005); *Jimenez v. Tolentino*, 490 Phil. 367 (2005); *Nava v. Commission on Audit*, 419 Phil. 544 (2001); *Baylon v. Office of the Ombudsman*, 423 Phil. 705 (2001); *Cabahug v. People of the Philippines*, 426 Phil. 490 (2002); *Esquivel v. Ombudsman*, 437 Phil. 702 (2002); *Flores v. Office of the Ombudsman*, 437 Phil. 684 (2002); *Roxas v. Hon. Vasquez*, 411 Phil. 276 (2001); *Layus v. Sandiganbayan*, 377 Phil. 1067 (1999), *Rodrigo, Jr. v. Sandiganbayan*, 362 Phil. 646 (1999); *Camang v. Hon. Guerrero*, 335 Phil. 945 (1997); *Ocampo v. Ombudsman*, G.R. No. 103446-47, 30 August 1993, 225 SCRA 725; *Young v. Office of the Ombudsman*, G.R. No. 110736, 27 December 1993, 228 SCRA 718.

⁶⁶ *Rollo*, p. 74.

forwarded to the appropriate office or official for fact-finding investigation; e) referred for administrative adjudication; or f) *subjected to a preliminary investigation*.⁶⁷

Under its own Rules of Procedure, we note that the Ombudsman is not even required to conduct a preliminary investigation if the complaint palpably lacks merit.⁶⁸ In the present case, the Ombudsman found enough bases to proceed with preliminary investigation. However, after weighing Artex's allegations and evidence *vis-à-vis* the respondents' evidence and counter-arguments, the Ombudsman was not convinced that there existed a probable cause to prosecute the respondents for violation of Section 3(e) of RA 3019.

We will not belabor the Ombudsman's legal and factual bases for dismissing the complaint as we have discussed these above. Suffice it to say that it did not find probable cause after performing its constitutional mandate to investigate Artex's complaint. Assuming its evaluation of the evidence and application of the law on the facts of the case is erroneous (*i.e.*, error in judgment), this cannot be corrected by a *certiorari* petition. On this basis alone, we can dismiss the present petition.

Second, even if we liberally extend the exception to the general rule against the review of the findings of the Ombudsman, there is still no basis to grant the petition.

The determination of grave abuse of discretion as the exception to the general rule of non-interference in the Ombudsman's exercise of its powers is precisely the office of the extraordinary writ of *certiorari*.⁶⁹ Artex failed to convince us that the Ombudsman gravely abused its discretion.

We have consistently held that an act of a court or tribunal can only be considered to be grave abuse of discretion when the act is done in a capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Furthermore, the use of a petition for *certiorari* is restricted only to truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void.⁷⁰

Applying these standards to the present petition, we fail to see the grave abuse of discretion that the petitioner alleged. We find, on the contrary, that the Ombudsman merely performed its constitutional mandate

⁶⁷ Administrative Order No. 07 of the Ombudsman dated April 10, 1990.

⁶⁸ *Supra* note 64, at 196.

⁶⁹ *Id.* at 197.

⁷⁰ *Yu v. Judge Reyes-Carpio*, 667 Phil. 474, 481-482 (2011), citations omitted.

when it dismissed the complaint as it found that the respondents had acted legally and in the performance of their official functions.

Artex presses its point with the argument that the Ombudsman's failure to consider the respondents' actions as a whole and its application of a higher quantum of evidence constitute grave abuse of discretion. We find no merit in these contentions.

The Ombudsman cannot, as it did not, readily assume, based on mere allegations, that the respondents' acts were interconnected, performed with unity, and with an eye toward preventing Artex from exercising its right of redemption. For the Ombudsman to take this approach, a clear or credible unifying purpose must first be shown, linking or animating the respondents' separate acts.

Notably, the Ombudsman did not find a unifying purpose that would link the respondents' separate acts. On the contrary, it found that the respondents acted pursuant to their duty, or at least pursuant to what they, in good faith, thought the law required of them.

To stress, the Ombudsman found that : (1) respondents Jose and Marteja advised Artex's representatives to join in the auction but the latter failed to do so; (2) respondents Jose and Marteja required Artex to extend its corporate life because it was "about to expire"; (3) respondent Atty. Del Mundo advised the Office of the City Treasurer to reject the request for redemption because Artex's CTC was fake, in violation of the Local Government Code; (4) respondents Jose and Marterja issued the certificate of non-redemption in the belief that that the one-year period is counted from the auction date (the City Legal Office later opined that the one-year period is counted from the *registration of the sale* and not on the actual sale); and (5) respondent Register of Deeds Atty. Timones had the ministerial duty to record VN's consolidated ownership over the properties, even without the final deed of conveyance.

These findings, to our mind, sufficiently support the dismissal of the complaint. Not only did the Ombudsman address all the allegations made by Artex, it also explained why the respondents' acts were not tainted with manifest partiality, evident bad faith, or gross, inexcusable negligence.


On the issue of probable cause, we note that the Ombudsman sufficiently clarified that it did not require Artex to prove a quantum of evidence higher than probable cause. It explained that "*in view of the scarcity of evidence presented by Artex, there is no sufficient ground to engender a well-founded belief that a violation of Section 3(e) of RA 3019 has been committed by the respondents.*"⁷¹

⁷¹ Rollo, p. 97.

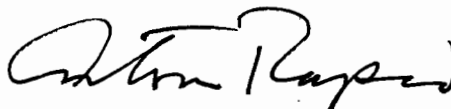
We find that the above phraseology is the classic definition of probable cause. Although it might have been more prudent if the Ombudsman explicitly used the term *probable cause*, the fact that it used *prima facie* instead, cannot be considered a grave abuse of its discretion. Besides, the mere use of the term *prima facie* did not change the quantum of evidence required in a preliminary investigation conducted by the Ombudsman. What matters is that the Ombudsman actually applied the concept of *probable cause* in determining whether there was basis to indict the respondents.

WHEREFORE, premises considered, we **DISMISS** the petition and **AFFIRM** the May 30, 2011 resolution and the December 28, 2011 order of the Office of the Ombudsman in Case No. OMB-C-C-10-0199-E.

SO ORDERED.


ARTURO D. BRION
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


(On Leave)
MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


MARVIC M.V.F. LEONEN
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.


ANTONIO T. CARPIO
Associate Justice
Chairperson

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