

94 Phil. 623

[G.R. No. L-6493. March 25, 1954]

EUGENIO S. DE GRACIA, PETITIONER, VS. HON. RAMON R. SAN JOSE, REPUBLIC SURETY & INSURANCE CO., INC., AND SHERIFF OF THE CITY OF MANILA, RESPONDENTS.

D E C I S I O N

REYES, J.:

Petitioner is the registered owner of the real property described in Transfer Certificate of Title No. 3731 of the Land Records of the City of Manila, which, by way of extra judicial foreclosure of a mortgage constituted upon the same in favor of the Rehabilitation Finance Corporation, was on November 14, 1952, sold to the Republic Surety & Insurance Co., Inc., as the highest bidder at a public auction conducted by the sheriff of said city under a special power of attorney attached to the mortgage deed and pursuant to Act No. 3135, as amended by Act No. 4118. Three days after the sale, the purchaser filed an *ex parte* motion, duly verified, in the fourth branch of the Court of First Instance of Manila as authorized in section 7 of the same Act, as amended, praying that it be given possession of the property during the redemption period and offering to furnish the corresponding bond. But before the motion could be acted upon, herein petitioner filed an opposition thereto and followed it with a complaint for the annulment of the sale and a motion to dismiss the petition for a writ of possession or to postpone consideration thereof until the complaint for annulment could be decided. Being specifically empowered by the Act to grant such writ on an *ex parte* motion by the purchaser, the court refused to be sidetracked and authorized the issuance of the writ upon the filing of a bond without prejudice to the right of the oppositor to question the validity of the sale in the manner provided

by law.

Contending that the lower court acted without jurisdiction and with grave abuse of discretion in authorizing the issuance of the writ, petitioner has come to this Court for a writ of certiorari and prohibition.

The petition is without merit.

Sections 7 and 8 of Act No. 3135, as amended, provide:

“SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form or an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately. (Italics supplied.)

“Sec.

8. The debtor may, in the proceedings in which possession was requested but not later than thirty days after the purchaser was given

possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal.”

As may be seen, the law expressly authorizes the purchaser to petition for a writ of possession during the redemption period by filing an *ex parte* motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title; and upon the filing of such motion and the approval of the corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession.

Under the legal provisions above copied, the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the court. And any question regarding the regularity and validity of the sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession, since, under the Act, the proceeding for this is *ex parte*.

It thus appear that the respondent Judge, in ordering the issuance of a writ of possession in this case, merely obeyed an express mandate of the law in the manner and upon the terms therein provided, and petitioner may not complain that he has been deprived of a substantial right without due process, because the order states that it is to be

“without prejudice to the rights of the oppositor to question the validity of the above mentioned sale in the manner provided by law.”

Having merely followed an express provision of law, whose validity is not questioned, the Judge cannot be charged with having acted without jurisdiction or with grave abuse of discretion. The rule that the purchaser at a judicial public auction is not entitled to possession during the period of redemption is not applicable to a sale under Act No. 3135 where the granting of said possession is expressly authorized. And if this Court in the case of *Previsora Filipina vs. Felix Z. Ledda*, 66 Phil., 573, refused to give effect to the provisions of Act No. 4118 (the amendatory Act) by not authorizing the issuance of a writ of possession during the period of redemption, it was because the mortgage involved in the case was constituted prior to the approval of said Act and, “civil laws have no retroactive effect unless it is otherwise provided therein.” In the present case, the mortgage was constituted in 1948 and 1949. It is, therefore, subject to the provisions of the Act, which took effect on December

In view of the foregoing, the petition for certiorari and prohibition is dismissed, with costs against petitioner.

Paras, C. J., Jugo, Pablo, Bautista Angelo, Bengzon, Labrador, Padilla, Concepcion, Montemayor and Diokno, JJ., concur.