

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. THE COURT OF APPEALS, HON. HERMOGENES CALUAG, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, AND SPOUSES HONESTO G. NICANDRO...

G.R. No. L-28774. September 21, 1982

Ponente: BARREDO, J.

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BARREDO, J.:

Motion for reconsideration filed by respondent spouses seeking reversal of Our decision of February 28, 1980 which overturned the decision of the Court of Appeals in CA-G.R. No. 35418-E, entitled *Honesto G. Nicandro, et al. vs. Development Bank of the Philippines, et al.*, affirming the judgment of the Court of First Instance of Rizal upholding the right of said private respondents over two lots which they had purchased from the then Philippine Homesite and Housing Corporation, now National Housing Authority, to be referred to later in the opinion only as PHHC, which appear to have been among 159 lots purportedly covered already by an earlier sales agreement between the said housing corporation, on the one hand, and the Development Bank of the Philippines hereinafter to be referred to as Bank, on the other.

To be more specific, the background facts relevant to the motion for reconsideration now before Us extant in the records and in Our decision sought to be reconsidered are as follows:

On October 25, 1955 the Bank entered into an agreement of sale to it by the PHHC of 159 contiguous lots having a total area of 91,188.30 square meters located in the Diliman Estate Subdivision West Triangle, Quezon City, paying them a down payment of P400,000.00 of the P802,155.56 stipulated purchase price. However, the sale could not be then registered because the subdivision plan of the area was still pending approval.

The foregoing transaction notwithstanding, on October 14, 1958, the then Acting General Manager of the PHHC, Sergio Ortiz, approved an order of sale of lots Nos. 2 and 4, which were among the above 159, to private respondent spouses, the Nicandros. On November 7, 1958, two deeds of sale, one in favor of the husband and another in favor of the wife, were prepared by the Sales Division of the PHHC evidently upon orders of higher authorities thereof, and submitted to and approved by the Board of Directors, after which it was signed by General Manager Bernardo Torres. For reasons not appearing in the record, the originals of those deeds were retained at the PHHC office.

At this juncture, it must be stated that when Acting General Manager Ortiz approved the order of sale, and that was before the board and General Manager Torres acted, their subordinates pointedly informed him as well as the board and Torres later that the two lots then being sold to the Nicandros were among the 159 lots involved in the transaction with the Bank.

On January 15, 1959, the sales agreement between the PHHC and the Bank was entered in the day book of the Office of the Register of Deeds of Quezon City as a "sale of an unsegregated portion - - - ; new titles to be issued

upon presentation of the corresponding subdivision plan and technical descriptions duly approved by the authorities." (Exhibit 15) At that time, the title over the lots was TCT 1356.

On their part, on February 16, 1959, the Nicandros sought to register their signed duplicate copy of the sale to them, but the Register of Deeds demurred because precisely, the original was not presented, apart from the omission to submit the consent of the GSIS, then the mortgagee of the property, and for lack of the required documentary stamps. On the following day, February 17, 1959 the Bank nonetheless registered affidavits of adverse claims on lots 2 and 4. This was done already on TCT 36533 which had replaced TCT 1356.

Such attempt of the Nicandros and action by the Bank were spawned by the fact that evidently, the validity of the transaction between the PHHC and the Bank had been earlier questioned, for as early as January 20, 1959, the Secretary of Justice, upon request of the Executive Secretary, rendered an opinion (Opinion No. 16, Series of 1959) thus:

[1] "'Premises considered, it is our opinion that the RFC (DBP) has no express or incidental power to undertake the housing project under consideration and that the same is incongruous with, if not a clear violation of, the prohibition contained in Section 23 of Republic Act No. 85.' (Annex 'A', Complaint.)"

Importantly, on February 17, 1959, on the basis of the foregoing opinion of the Secretary of Justice, the Office of the President required the Bank to revoke its resolution authorizing the purchase of the PHHC lots. (That was the day before the Nicandros tried to register the sale to them) Still, upon being informed that the required subdivision plan had already been duly recorded on TCT 36533, the Bank forthwith requested, as already stated, the annotation of its sales agreement, which was done.

Subsequently, the Bank went a step farther by asking for the issuance of new certificates of title in its favor. This petition was elevated en consulta to the Land Registration Commission which denied the requested registration on July 29, 1959. However, in the appeal to this Supreme Court, it was held on April 29, 1961, in G.R. No. L-16448, I SCRA 1334, that the annotation made by the Bank on January 15, 1959 constituted sufficient annotation to bind third persons, including the Nicandros. But long prior to Our decision, on March 14, 1960, the Secretary of Justice, answering a query of the Bank whether the lots could be sold to its employees on cash basis ruled negatively in Opinion No. 4, series of 1960.

Matters were at such stage, when on June 17, 1961, Republic Act No. 3147 amending Section 23 of the Organic Act of the Bank, Republic Act 85, was approved and became effective. The said amendatory Act provides:

"No officer or employee of the bank nor any government official who may exercise executive or supervisory authority over the said bank either directly, or indirectly, for himself or as representative or agent of others shall, except when the same shall be in the form of advances appropriated or set aside by the Bank itself in order to provide for housing for the benefit of its officials and employees, borrow money from the Bank, nor shall become a guarantor, indorser or surety for loans from the said bank to the others, or in any manner be an obligor for moneys borrowed from the said Bank. Any such officer or employee who violates the provisions of this section shall be immediately removed by competent authority and said officer or employee shall be punished by imprisonment of not less than one year nor exceeding five years and by a fine of not less than one thousand nor more than five thousand pesos."

To definitely clear up matters, on November 10, 1961, the subject action was filed by respondent spouses praying for the rescission of the sale to the Bank of the two lots in question and the consequent cancellation of the Bank's certificate of title thereto, with damages, alleging as their main bases that the said purchase by the Bank was not only ultra vires but illegal, being a direct violation of the express prohibition of Section 13 of Republic Act 85, and as an alternative remedy, they asked that the PHHC be made to pay them the "value which said properties

may have on the date of the decision." After due proceedings, both the trial court and Court of Appeals ordered the rescission prayed for, but in Our decision of February 28, 1980, We held otherwise, on the sole ground that the passage of Republic Act 3147 cured retroactively the lack of authority and violation of law relied upon by those lower courts, hence the instant motion for reconsideration, followed by a supplement thereto with the comment thereon of petitioner, rejoinder of respondents, the petitioner's comment on said rejoinder and finally the sur-rejoinder of respondents.

The basic prop of respondents' plea for reconsideration is that it was inappropriate for Us to apply in this case the principle of retro-activity, given the peculiar circumstances of this case, wherein, it is claimed, it appears that the Nicandros had already acquired a vested right to buy the lots in controversy preferentially over the Bank. Indeed, as matters stood at the time of the passage, there could be no doubt that the Bank's resolution authorizing the purchase in question was, if well intentioned as far as the welfare of its employees was concerned, definitely beyond the powers of said board, if not on its face, more importantly in its intention. It is an undeniable fact that the money appropriated in the resolution was to be used to pay the PHHC for the account of the respective employees who would be lucky to be awarded a lot, with the obligation on their part of paying the Bank in periodic installments. In substance and in truth, such an arrangement amounted to each employee concerned borrowing or getting a loan from the bank. This concept of the transaction is assumed by both parties as the plain unvarnished objective of the resolution. And such being the factual situation whose legality or validity We were called upon to determine, respondents maintain that in a way Our decision evaded the real issue or failed to pass upon the pertinent ramifications and implications of the retroactivity theory on which the same was solely based.

After reviewing more carefully and maturely the juridical roots of this controversy in the light of the arguments adduced by the parties relative to respondents' motion for reconsideration, We feel persuaded that indeed Our decision was incomplete in the sense that We did not examine and rule on the relevant aspects of the retro-activity theory We applied.

To start with, We assumed without any evidentiary basis that Republic Act 3147 was purposely intended to remedy the problem that the facts of this case had spawned. Nothing in the record indicates that evidence was introduced in such regard, thus making Our ruling more or less a mere surmise or inference, quite logical as it might be in common sense. But who could know that the legislature so intended, considering that it is a familiar rule of statutory construction that generally all laws are intended to be prospective in their effect unless there are express provisions to the contrary? Thus, Article 4 of the Civil Code ordains explicitly that laws "have no retroactive effect, unless the contrary is provided."

As if to avoid the natural logical consequence of this provision of the Civil Code just quoted, Our decision resorted to a shade of the theory of retroactivity and held that the intention of Republic Act 3147 was curative, holding that curative laws "are forms of retrospective legislation(s) which reach back on past events and which would be otherwise ineffective for the purpose the parties intended. – They thus make valid that which before enactment of the statute was invalid," footnoting said proposition with three American decisions, not one of them of the Federal Court.

But as We see it now, at best, the holdings We have quoted are general principles to be applied only in the appropriate cases wherein their peculiar respective circumstances permit. On the other hand, the above-quoted Article 4 of our Civil Code is unequivocal and definite, leaving no room for doubt as to its application. Corollarily, no court decision, much less of any foreign one can alter such mandate. And, indeed, in this connection, it may be pointed out that whereas the Old Civil Code provision (Article 3) corresponding to what is Article 4 now was followed immediately by its Article 4 providing that:

"Acts performed contrary to law are void, except in cases in which the law itself gives validity to such acts.

Rights granted by law may be waived, provided such waiver be not contrary to public interest or public order, or prejudicial to a third person."

While the second paragraph of said old Article 4 permitted the waiver of rights granted by law, such as perhaps the non-retroactivity under Article 4, in our new Civil Code, under its Article 1409, it is made clear that "contracts -- expressly prohibited by law or declared void by law" are "inexistent and void from the beginning" and "cannot be ratified," thereby making emphatic that as far as prohibitory laws are concerned, their invalidity is not waivable. In the instant case, Section 23 of Republic Act 85 cannot but be considered as mandatorily prohibitory, containing as it does heavy penal sanctions for its violations. Consequently, considering that the contract between the PHHC and the Bank of October 25, 1955 was void from its inception being expressly prohibited by law, PHHC could not have waived such invalidity and was therefore, free to disengage itself therefrom as if it did not exist. No court action was necessary in that respect. (Paras, Civil Code of the Philippines Annotated, Vol. IV, p. 550, 1967 ed.)

What is more, in addition to the above general principles, since what is involved here is a contractual matter, reference to the pertinent provisions of the Civil Code on contracts is even more compelling in its repudiation of the agreement here at issue. As already stated above, Article 1409 declares as "inexistent and void from the beginning -- (contracts) expressly prohibited or declared void by law" (No. 7) and further, that such "contract(s) cannot be ratified." (last paragraph)

Of course, Article 1411 provides that "when the nullity proceeds from the illegality of the cause or object of the contract, and the act constitutes a criminal offense, both parties being in *pari delicto*, they shall have no action against each other, and both shall be prosecuted." In the case at bar, however, it is neither the cause nor the object that is illegal, rather it is the objective as already explained earlier. More, We are impressed that the prohibition against an officer or employee to borrow money from the employer-bank is intrinsically against public policy and not merely illegal by statutory precept. We have already held that the doctrine of *in pari delicto* cannot be invoked when to disallow the illegal transaction would enhance public policy. (*Philippine Banking vs. Lui She*, 21 SCRA 52; *Rellosa vs. Gaw Chee Hun*, 93 Phil. 827) Logically and corrolarily, the deprivation of any right of action to the PHHC vis-a-vis the Bank does not carry with it the loss of the right of action by a third party who precisely predicated his transaction on the very premise that the agreement between the Bank and PHHC was non-existent, hence his priority over the prohibited party or the Bank. If the PHHC itself is not barred by *pari delicto*, much less could respondents covered thereby. Indeed, it would be unjust, unfair and inequitable to deprive respondents of the right that clearly belonged to them to deal with the PHHC who at the time of the transaction was not only guided by opinions of the Secretary of Justice but totally disengaged from its agreement with the Bank by the directive of the President declaring the illegality and juridical non-existence of the transaction between it and the Bank. In simple terms, at the time the Nicandros dealt with PHHC, and that was after the Secretary of Justice had given his adverse opinion and the President had ordered the Bank to cancel its purchase resolution, and even much longer before Republic Act 3147 was passed, the latter was entirely free to act as it did, and then and there, the vested right of said respondents was born. So, even if it were juridically possible to sustain generally that Articles 4, 5 and 1409 of the Civil Code (New) could be rendered ineffective by a law enacted after an illegal transaction has already been entered into by certain parties, as a curative statute, a point We do not have to decide here, it is gravely doubtful if the theory of curative retroactiveness could be applied here, considering that the result in such a case would be violative of the constitutional injunction against deprivation of vested rights born of contracts the obligations under which would be impaired. (Article IV, Section 11, Constitution of the Philippines)

At this juncture, it may be added that the decision of this Court in G. R. No. L-16488 of April 29, 1961, I SCRA 13334 above-referred to may not be availed of by petitioner Bank, not only because the validity of the purchase

here in controversy was not made an issue, much less passed upon there, but also because, the PHHC, instead of ratifying the same repudiated it by transacting with respondents Nicandros over the same subject matter. In a sense, We feel that the bad faith imputed by Us to the respondents in Our decision was rather uncalled for, since the questionable character of the sale to the Bank had already been passed upon by authoritative officials when they dealt with the PHHC.

It now only remains for Us to hold as We do hold that Republic Act 3147 contained no provision imparting to it retroactive effect and inasmuch as, for the considerations already discussed above, (a) it is not only that the contract between the Bank and the PHHC could not be ratified but (b) that PHHC could not waive the illegality thereof, it is juridically absurd to give curative character to said legislation. We reiterate that the rules of statutory construction on curative retroactivity referred to in Our decision do not squarely apply to the instant situation.

The Bank insists only now that the contract was not violative of even the original Article 23 aforequoted because there is no showing that any employee of the Bank even borrowed from the Bank. Such contention overlooks conveniently the fact that as We have said earlier, the evident intent and purpose of the purchase was to resell the land to the employees on installment. Besides, if such late argument had any basis, of what use then was their invocation of Republic Act 3147 as curative? What would have been there to cure?

IN VIEW OF ALL THE FOREGOING, We are constrained to resolve, as We do hereby resolve, to reconsider and set aside Our decision in this case of February 28, 1980, and in lieu thereof, We hereby render judgment denying the petition for review, without costs.

IT IS SO ORDERED.

Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.

Aquino and Concepcion, Jr., JJ., no part.

[1] Section 23 of Republic Act 85 originally read thus: "No officer or employee of the bank nor any government official who may exercise executive or supervisory authority over the said bank either directly, or indirectly, for himself or as representative or agent of others shall borrow money from the Bank, nor shall become a guarantor, indorser or surety for loans from the said bank to the others, or in any manner be an obligor for moneys borrowed from the said Bank. Any such officer or employee who violates the provisions of this section shall be immediately removed by competent authority and said officer or employee shall be punished by imprisonment of not less than one year nor exceeding five years and by a fine of not less than one thousand nor more than five thousand pesos."

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