

SERGIO M. ISADA, IN HIS CAPACITY AS ACTING GENERAL MANAGER OF THE NATIONAL WATERWORKS & SEWERAGE AUTHORITY (NWSA) AND IN HIS PERSONAL CAPACITY, PETITIONER, VS. JUDGE JUAN L. BOC...*G.R. No. L-33535. January 17, 1975*

Ponente: BARREDO, J.

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Petition for certiorari and prohibition praying that the orders of respondent court of March 5, 1971 and May 11, 1971, granting the mandatory preliminary injunction applied for by private respondents, which commands petitioner to execute certain deeds of sale of lots of the NWSA or the National Waterworks & Sewerage Authority (now the Metropolitan Waterworks & Sewerage System), be set aside, with prayer for preliminary injunction. Acting on the petition, on May 26, 1971, the Court issued the preliminary injunction prayed for. Respondents filed their answer in due time, after which the parties filed their respective memoranda in lieu of oral argument and the case was submitted for decision.

On June 18, 1968, pursuant to its collective bargaining agreement with two unions of its employees and workers, the KKKM-NWSA (Kaisahan at Kapatiran ng Mga Manggagawa sa NWSA) and BELA (Balara Employees and Laborers Association), and "in line with the Housing Program of the Administration," NWSA, through its board of directors, segregated and set aside a portion of its land below the La Mesa Dam in Quezon City, consisting of 58 hectares, as the initial site of the proposed NWSA Housing Project for said workers and employees. (Resolution 415-'68, Annex A of the petition, p. 43, Record.) On December 23, 1968, a raffle was held to determine who among its employees and workers would be allowed to purchase housing units, considering that the estimated number of said units would not be enough for all the members of the two unions. Only 1,411 awardees were selected.

With the prospective awardees thus known, the NWSA Board approved Resolution No. 113-'69, on March 11, 1969 worded as follows:

"RESOLVED, That in pursuance to Resolution No. 415, series 1968, and as a gesture of harmonious Labor-Management relationships in the NWSA, the sale to the NWSA Labor Unions (KKMK & BELA) of raw land with a total area of 479,433 square meters consisting of:

Area for proposed main and side streets 130,735 sq. m.

Saleable Area 348,698 sq.m.

within the portion of the NWSA property below the La Mesa Dam, Quezon City, as reserved and allotted for the NWSA Housing Project under said Res. No. 415, s. 1968, at the minimal price of P4.00 per square meter or at a total value of P1,917,732.00, be and is hereby approved, Provided That, in the repayment of the land by the

Unions, a housing lot in the said housing project, shall be priced at P5.50 per square meter in order to absorb the cost of the land to be converted into streets.

x xx." (Annex B, p. 45, Record.)

Shortly thereafter, upon request of the unions made on March 24 and 26, 1969, the Board approved Resolution No. 154-'69 on April 1, 1969 reading thus:

"RESOLVED, That in order to facilitate the financing of the housing project for the NWSA rank and file as contemplated under Resolution No. 415, series 1968 and Resolution No. 113, series 1969, the request of the Unions (KKMK-BELA) for the mass preparation of lot titles and the transfer of the same to the individual employee-awardees so that such titles can be deposited under the care and custody of the GSIS to serve as collaterals of individual real estate loan applications, be and is hereby approved, provided that the individual employee-awardees shall make a down payment in the amount of P100.00 for the awarded lot, deductible from the payrolls, or payable in cash.

RESOLVED FURTHER, That in the preparation of the aforesaid Transfer Certificate of Titles (TCT) to the individual employee-awardees, a notation of conviction of final transfer should be entered at the back thereof under the column 'Memorandum of Encumbrance,' to the effect that absolute ownership of the lot will only be obtained upon full payment of the individual loan applications to the GSIS, a provision shall be inserted therein whereby the cost of the lot or the unpaid balance of the cost of the same, shall be deducted from the proceeds of the loan in favor of the NWSA.

x x x." (Annex C, p. 47, Record.)

This resolution was subsequently amended on June 17, 1969 to read as follows;

"RESOLVED, That the second paragraph of Resolution No. 154, series 1969, which approved the request of the Union (KKMK-BELA) for the mass preparation of Transfer Certificate of Titles to individual employee-awardees in the NWSA Housing Project, be and is hereby amended to read as follows:

'Resolved Further, That in the preparation of the aforesaid Transfer Certificate of Title to individual employee-awardees, a notation should be entered at the back of said titles under the column 'Memorandum of Encumbrances' that the said lot is mortgaged to the NWSA for the balance of the purchase price, and that in the preparation of the individual loan applications to the GSIS, a provision shall be inserted therein whereby the cost of the lot or the unpaid balance of the cost of the same, shall be deducted from the proceeds of the GSIS loan and paid to the NWSA, after which the NWSA shall execute the corresponding Deed of Release and Cancellation of Mortgage.'

RESOLVED FURTHER, That the Acting General Manager, NWSA, be and is hereby authorized to sign for and in behalf of the Authority the individual deed of sale to employee-awardees.'

x x x." (Resolution No. 283-'69, Annex D, p. 49, Record.)

In other words, by way of implementing the sale of the homesite to the unions for the benefit of its individual members who had won in the raffle, it was necessary to execute deeds of sale in favor respectively of each awardee. Accordingly, a subdivision plan was prepared, on the basis of which each awardee was to be allotted his respective lot.[1] This lot, to be identified by block number and lot number, would be the basis of the deeds. Obviously, no titles could be immediately issued because payment to the NWSA would have to come from the GSIS, and the GSIS is agreeable to this arrangement, so much so that, as will be stated more in detail later, it has gone to the extent of already granting the KKK-NWSA, one of the unions, an interim loan of P1.5 M. to pay the contractor who had already started the work.

Indeed, in the meanwhile, the awardees, through an attorney-in-fact, the respondent Genero C. Bautista, who acted with the assistance of a Housing Project Implementation Committee, appointed and created, respectively, by them, called for bids in the newspapers, through paid advertisements, among contractors, and on April 24, 1969, the job was awarded to Builders Heavy Equipment and Service Corporation or BHESCO. And in order not to lose time, the KKK-NWSA requested the Board to allow it to obtain an interim loan with the GSIS, on the security of the lots sold by NWSA to its members, so BHESCO could immediately start working on the project. Acting on this request, on August 29, 1969, the Board approved the following resolution:

"RESOLVED, That in line with the recommendation of Management, the request of the KKK-NWSA for authority to mortgage with the Government Service Insurance System the mother title of the land allotted as housing project of the KKK-NWSA, identified as TCT No. 141924 of the Registry of Deeds of Quezon City, for an interim loan pending completion of the individual lot titles of the NWSA employee-awardees who are qualified to borrow real estate loans with the GSIS, be and is hereby granted and approved subject to the following conditions:

- That the GSIS shall make a written commitment to the NWSA that it will deduct from the loan of every individual awardee, the amount corresponding to the balance of the purchase price of the lot sold to the individual NWSA employee-awardee, and shall remit the same to the NWSA.
- That at the back of the aforesaid TCT No. 141924, under the column 'Memorandum of Encumbrance,' shall be entered a notation to the effect that the total area of 130,735 square meters earmarked for the proposed main and side streets valued at P522,940.00 is not included as being mortgaged.

x x x." (Resolution No. 410-'69, Annex B, p. 353, Record.)

Accordingly, BHESCO proceeded to develop the site. Incidentally, it may be mentioned at this point that the P1.5 M. interim loan given by the GSIS to the KKK-NWSA by virtue of the above resolution has to be assumed pro-rata by the individual awardees, and as it is drawing interest in the meanwhile, the awardees will have to carry the burden of said interests until the work on the project is resumed. Please note that the award to BHESCO took place, presumably with the knowledge of NWSA before the resolution of June 17, 1969 was approved.

During the month of January, 1970, petitioner, as manager of NWSA and pursuant to the terms of above-quoted Resolution No. 283-'69, began executing deeds of sale with mortgage in favor of individual awardees. He has signed already 29 of them.² On February 24, 1970, due to intra-union disputes, the President ordered the suspension of the Housing Project but later, on May 22, 1970, upon the joint request of the two unions, the suspension was lifted. After this lifting, the NWSA approved the following resolution (No. 150-'70) on August 18, 1970:

"RESOLVED, That Condition No. 1 of Resolution No. 410-'69, be and is hereby amended to read as follows:

- That the GSIS shall make a written commitment to the NWSA that it will deduct from the loan of every individual awardee, the amount corresponding to the balance of the purchase price of the lot sold to the individual NWSA employee-awardee, and that such amount to be deducted in favor of NWSA shall be set off against the outstanding accounts of the NWSA with the GSIS, like the unremitted insurance and retirement premiums as well as salary loan deductions, instead of remitting the same directly to the NWSA.'

x x x." (Annex C. p. 354, Record.)

GSIS agreed to these conditions and forthwith granted the interim loan of P1.5 M. above-referred to.

All these notwithstanding, Isada has refused and continues to refuse to sign the rest of the deeds corresponding to

the remaining awardees. Hence, the petition for mandamus in the lower court. And in connection with said petition, private respondents asked for a writ of preliminary mandatory injunction, which, after a hearing wherein practically all the issues on the merits of the mandamus were threshed out and made the subject of the presentation of evidence by both parties, respondent court granted. It is against this provisional remedy that the instant petition before Us was filed.

At first blush it would seem to appear that the remedy sought by respondents in their special civil action of mandamus is specific performance of their contract with NWSA embodied in the resolutions aforequoted. A closer scrutiny of the circumstances related to such contract readily shows, however, that NWSA is not reneging nor does it refuse to comply with its obligations. There can be no question that as between NWSA and the 1,411 awardees selected by raffle on December 23, 1968 and listed in Annex G of the answer herein of respondents, there is already not only a perfected but a partially consummated contract of sale, considering that it is not denied that the awardees listed in said Annex G have already paid the NWSA the corresponding down payment required by Resolution 154-'69. And since it is not pretended that NWSA is backing out of said contract, there is no need to compel it to comply. It is only petitioner, Manager Isada, who is adamantly and arbitrarily failing to comply with his clear official duty in the premises, thereby obstructing and impeding the implementation of a contract, the legality of which is not in issue. We reiterate that there can be no dispute that as between respondent employees and their unions, on the one hand, and NWSA on the other, there is already a partially consummated sale by the latter to the former of 479,433 square meters of raw land, the technical description of which is known and definite, for a price fixed in the resolution aforequoted of March 11, 1969. The method of financing this purchase by respondents was duly approved by NWSA in its above resolutions of April 1, 1969 and June 17, 1969. In plain terms, the arrangement is as follows:

Respondent employees would secure individual loans from the GSIS. Accordingly, NWSA would have to execute the corresponding deeds in favor of the individual employees who won in the raffle to enable them to mortgage their respective lots to the GSIS. While, as a matter of procedure, the said deeds would provide for a mortgage in favor of NWSA to secure the payment to it of the lots, under the arrangement, upon approval of the individual loans, GSIS would credit to NWSA's account therewith the amount corresponding to the purchase price thereof, and the mortgage will forthwith be transferred from NWSA to the GSIS as mortgagee. Under this procedure, upon being duly credited for the value of the lots, NWSA would have nothing to do anymore with the project, as the completion thereof would already be a matter exclusively between the GSIS, on the one hand, and the awardees and the contractor, on the other.

It is not pretended that there is any legal obstacle or any other factor impeding the consummation of the sale contract between the NWSA and the awardees. It is true that for a time, the President ordered the suspension of the project in question, but this injunction was subsequently lifted. The inter-union trouble which caused said suspension has already been finally settled. The civil action filed by officers of PAFLU questioning the powers of respondents to enter into the agreements with NWSA and GSIS has been dismissed by the Court of First Instance of Manila, and said decision is now final. Indeed, even the excuse which petitioner attempted to give to the effect that he had to stop signing the deeds in question because of said union trouble has, therefore, become definitely untenable.

Proof of the fact that the GSIS has agreed and is irrevocably committed to finance the project in dispute in the manner aforestated is that, actually, with the approval of the NWSA Board, upon recommendation of no less than petitioner himself, the GSIS has already granted an interim loan of P1.5 million to the respondents to pay the developer who had already started the work. Indeed, nothing, but absolutely nothing remains for the completion of the project except for the petitioner to sign the deeds in question and, of course, to also sign the corresponding

documents to complete the requirements for the final approval by the Land Registration Commission of the subdivision plan already bearing the imprimatur of the Quezon City Council.

It is, therefore, clear that the mandamus being sought by respondents is not for the specific performance of a contract. In essence, what respondent employees are asking for is a mandamus to compel an officer of a corporation to perform a duty imposed upon him by law. Under Section 7 of Republic Act 1383 creating the NWSA, among the functions of the Manager of NWSA is "to represent the Authority in all its business matters . . . and (to) perform such other executive duties as may be prescribed by law or may be required of him by resolution of the Board." In this connection, petitioner's contention that Resolution 283-'69 above merely "authorized" him to sign the deeds at issue but did not impose upon him the duty to do so cannot be sustained. There is nothing in the resolution granting him any discretion to interpose his own will and thereby set at naught the action of the Board selling land of the Authority to respondents. Under the terms of the resolution, petitioner's duty to sign the deeds properly prepared in conformity with the conditions agreed between the parties is as ministerial as the duty of an auditor to sign the warrant for the payment of an obligation of a government office to pay money pursuant to a contract the legality of which is not in dispute. In several, cases, We have held that mandamus would lie to compel the auditor to sign the warrant.[3]

In *Vda. de Serra vs. Salas*, 30 SCRA 541, the rule in mandamus that the rights of a party in a contract cannot be enforced by such remedy was held not to be really absolute. We said:

"A rule long familiar is that mandamus never issues in doubtful cases. (*Valdez vs. Gutierrez* (1968), 23 SCRA 661, 664, citing *Aprueba vs. Ganzon*(1966), 18 SCRA 8, 12.) It requires a showing of a complete and clear legal right in the petitioner to the performance of ministerial acts. (Section 3, Rule 65, Rules of Court; *Palileo vs. Ruiz Castro*, 85 Phil. 272, 275; *Aquino vs. General Manager* (1968), 22 SCRA 415, 420, citing *Zamora vs. Wright*, 53 Phil. 613, *Palileo vs. Ruiz Castro*, supra, *Cochoco vs. Icasiano*, L-599, March 20, 1954, and *Aprueba vs. Ganzon*, supra. See also: *Ramos vs. Diaz* (1967), 21 SCRA 1243, 1246.) In varying language, the principle echoed and reechoed is that legal rights may be enforced by mandamus only if those rights are well-defined, clear and certain. (*JRS Business Corporation vs. Montesa* (1968), 23 SCRA 190, 197-198, citing cases.) Otherwise, the mandamus petition must be dismissed. (Id., citing 3 Moran, *Comments on the Rules of Court* [1963 ed.] 172. See also: *Viuda e Hijos de Crispulo Zamora vs. Wright*, 53 Phil. 613, 621; *Alzate vs. Aldana*(1963), 8 SCRA 219, 223, citing *Tabigne vs. Duvall*, 16 Phil. 324.) This is not to say of course, that we should overlook the equally tested precept that where government contracts are completely performed on the part of the private party, and there is nothing more to do but to effect payment, mandamus will avail to command the government's proper officials to sign and issue the corresponding warrants. (*Hoey vs. Baldwin*, 1 Phil. 55 1, 558; *Compana General de Tabacos vs. French*, 39 Phil. 34, 59; *Quiogue vs. Romualdez*, 46 Phil. 337, 341. See also: *Villegas vs. Auditor General* (1966), 18 SCRA 877, 888-890,893, citing *Hoey vs. Baldwin*, supra, *Ynchausti & Co. vs. Wright*, 47 Phil. 866, 891, *Radiowealth, Inc. vs. Agregado*, 86 Phil. 429, 440, and *Guevara vs. Gimenez* (1962), 6 SCRA 807, 812-8 13)."

It is difficult to understand, much less sanction, the position of petitioner. In effect, by his refusal to sign the deeds in question, he is not only obstructing the implementation of a laudable project of the NWS A for the benefit of its employees and workers, he is in fact prevailing the compliance by the corporation with its legal obligation under the contract of sale with the awardees among said employees and workers. Not only that. His act has the effect of setting aside at least two other contracts already in the process of consummation, namely, the contract of the unions or the awardees with the BHESCO and the contract of loan with the GSIS, which, of course, has yet to be individualized and put in final form. Mandamus is a remedy in equity, and equitable considerations, not to speak of the legal ones, demand that these contracts be respected and enforced, and that petitioner does not put any further hindrance thereto.

We are not overlooking the strong suggestion of petitioner that respondent employees might be victimized by those in charge of the project, but aside from the fact that the apprehension is not shown to be beyond being merely speculative, not factual, the employees themselves are the ones who have gone to court for relief. There is no showing that any of them, much less a substantial number of them, are complaining about the way the affairs of the project are being undertaken by those whom they have designated for the purpose. Indeed, in some instances, the Court has refused to deny mandamus on the ground thus invoked by petitioner.[4]

We cannot see any adequate administrative remedy which respondents have not exhausted. Their complaint to the President has been referred to NWSA for action, and We do not expect the Board to replace petitioner with another official who would be willing to execute the deeds in question because, after all, the law imposes the function only on him. As to the allegation that the preliminary mandatory injunction has prejudged the case, We can only say that indeed, there is hardly anything else that remains to be litigated subsequently in the court below. Everything related to the rights of the parties is already before Us. If technically, there might be reason for Us to require a trial on the principal petition by the court below, such a roundabout procedure can serve no useful purpose. The final decision of the case would be nothing more than a reiteration of the order of mandatory injunction. We will only be delaying the housing project which has long been the dream of the respondent employees.

The common man, like, for example, a salaried employee, is entitled not only "to a little more food in his stomach, a little more clothing on his back, and a little more shelter over his head" but also to a lot, even small, where he can build his house and establish a permanent abode. "A man with a home and a means of subsistence is a lover of peace and order and will profess affections for his country, whereas one without a home and in penury is not only a social parasite but also a dangerous element in the social order" (Moran, J., dissent in *Kasilag vs. Rodriguez*, 69 Phil. 217, 254, 264). The Government, as the biggest employer, should be the first to help its employees in the solution of their housing problem.

WHEREFORE, the petition is dismissed. No costs.

Makalintal, C.J., Antonio, and Fernandez, JJ., concur.

Fernando (Chairman), J., concurs in the result.

Aquino, J., did not take part.

[1] When the petition in the court below was filed and at the time the questioned orders were issued, the subdivision plan had not yet been approved by the Quezon City Council, but according to Annexes D and D-1 of Petitioner's Memorandum in Lieu of Oral Argument, the same was approved, under the terms therein set forth by said Council on May 18, 1971. Of course, there is further need that the subdivision plan be duly approved by the Land Registration Commission and the corresponding land court, but We can take judicial notice of the fact that these would be given almost as a matter of course after the NWSA formally signifies its conformity thereto, which should follow from Resolution 154-'69. And in this connection, should the signature of petitioner be necessary in the corresponding papers, it is not expected that he would refrain giving such signature, considering the thrust of this decision. In any event, whether or not GSIS will accept the deeds before the final approval of the subdivision plan is something that is to be settled between the awardees and the GSIS only.

[2] The designations of the corresponding lots in these deeds were based on the subdivision plan (referred to in Kootnote No. 1) as submitted to and approved by the Quezon City Council.

[3] *Villegos, et al. vs. Auditor General, et al*, L-21352, Nov. 29, 1966; 18 SCRA 877, citing *Hoey vs. Baldwin*, 1

Phil. 551, 558; Ynchausti & Co. vs. Wright, 47 Phil. 866, 272 U.S. 640; Radiowealth, Inc. vs. Agregado, etc., et al, 86 Phil. 429, 440; Guevara vs. Gimenez, etc., et al., L-17115, Nov. 30, 1962. 6 SCRA 807.

[4] Villegas vs. Auditor General, supra. Cf. Villasanta, et al. vs. Bautisfa, et al., L-30824, Nov. 20, 1970. 36 SCRA 160, 166-167.

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