

**MARINA D. NARTATES, FOR HERSELF AND AS ADMINISTRATRIX OF
THE ESTATE OF THE LATE MAXIMO NARTATES, SR., PETITIONER,
VS. GOVERNMENT SERVICE INSURANCE SYSTEM, MILAGROS N.
BUTIAL AND...**

G.R. No. L-47669. December 07, 1987

Ponente: YAP, J.

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YAP, J.:

These two cases have been consolidated since they both stem from the foreclosure by the respondent Government Service Insurance System (GSIS for short) of the property mortgaged to it by the petitioner.

G.R. No. L-47669 entitled "Marina D. Nartates, et al. versus Government Service Insurance System, et al." involves an action by petitioner to annul the foreclosure proceedings instituted by the respondent GSIS. A complaint was filed by petitioner on June 2, 1977, which was amended on June 27, 1977, with the then Court of First Instance of Manila, Branch III, docketed as Civil Case No. 108846, alleging, among other, that the foreclosure proceeding held on March 17, 1976 was in violation of the manifest intent of P.D. 385; that what was foreclosed included properties not covered by the mortgage executed by plaintiff in favor of the GSIS; that the writ of possession obtained by GSIS ex parte on February 15, 1977 from the Court of First Instance of Manila, Branch IV, acting as Land Registration Court, was null and void since the foreclosure proceeding from which it arose was invalid; that the GSIS allowed defendant Milagros Butial to execute an undertaking to lease from the GSIS, subject to the approval of the latter's Board of Trustees, the premises occupied by the said defendant-lessee which are not covered by the mortgage executed by plaintiff in favor of the GSIS. The trial court dismissed the complaint, stating that "all considered, the court is of the view, and so here invoked is vested not with it but with Branch IV of this court which issued the herein questioned Writ of Possession." Hence, petitioner has come to this Court for review by writ of certiorari of the aforesaid order dismissing the complaint.

In G.R. No. L-47744, petitioner seeks to annul the writ of possession issued by the Court of First Instance of Manila, Branch IV, in LRC Record No. 11546 and to restrain its enforcement, alleging that it was issued before title was transferred in the name of the GSIS and while the property was still subject to lis pendens in Civil Case No. 108846 pending in Branch III of the court; that the writ of possession, if not restrained, would result in the deprivation of petitioner's property without due process of law, since part of the building foreclosed is built on land not covered by the mortgage; that failure to stay the enforcement of the writ of possession would result in multiplicity of suits, while its implementation would result in inequity and injustice to petitioner.

On February 3, 1977, the GSIS filed an ex-parte petition for the issuance of a writ of possession before the Court of First Instance of Manila, Branch IV (Judge Serafin Cuevas, presiding), docketed as LRC Record No. 11546, pursuant to Section 7 of Act No. 3135, as amended, and PD No. 385, being the highest bidder in the extrajudicial foreclosure of petitioner's property covered by TCT No. 74641. Since the period of redemption fixed by Section 6 of Act No. 3135 had not yet expired, the court directed the GSIS to post a bond in the amount of P83,200.00 as a

condition for the issuance of the writ of possession. The writ was issued on March 30, 1977, and on June 28, 1977, or a day after petitioner amended her complaint in Civil Case No. 108846 pending before Branch III of the Court of First Instance of Manila, petitioner filed a petition in LRC Record No. 11546 to annul the writ of possession issued by Branch IV of the court. Said petition was denied by Judge Cuevas on September 1, 1977. A motion for reconsideration filed by petitioner was also denied on November 24, 1977, but the GSIS was directed to refrain from taking possession of that portion of the building standing on land not included in the mortgage.

From the orders dated September 1, 1977 and November 24, 1977, petitioner has appealed to this Court. On March 28, 1978, the Court issued a temporary restraining order enjoining respondents from further proceeding in LRC Record No. 11546. However, on July 18, 1979, the Court lifted the temporary restraining order and allowed the respondent GSIS to collect the rentals from the building in litigation and granted its motion "for authority to lease the said premises to interested parties with the undertaking that all the rentals collected by the GSIS will be subject to future adjudication, thus, either credited to the purchase price if the re-purchase of the mortgaged parties by Marina D. Nartates is agreed upon or divided pro-rata between the GSIS and Mrs. Nartates, if she should be held still a co-owner of the building."

The background facts of the case are as follows:

On December 2, 1964, the spouses Maximo D. Nartates and Marina D. Nartates applied with the GSIS for a loan of P1 Million allegedly to finance the construction of a four (4) storey building on a parcel of land covered by TCT No. 74641 of the Registry of Deeds of Manila. The spouses offered as collaterals the parcel of land covered by TCT No. 74641, the building to be erected thereon, a parcel of land denominated as Lot 109, then still untitled, adjoining the aforesaid lot, and a parcel of land located in Caloocan City covered by TCT No. 67372. The loan value of the said properties as appraised by the GSIS was P332,600.00. At the time of the application of the loan, the construction of the building had already started.

Before the loan could be approved, however, Maximo Nartates died on January 11, 1967. His widow, herein petitioner Marina D. Nartates, continued with the loan application and secured court permission, as administratrix of the intestate estate of her late husband, to mortgage the above-mentioned properties.

On November 23, 1967, the GSIS approved a financing loan of P350,000.00 in favor of the petitioner, Mrs. Marina D. Nartates, the said loan to be repaid within a period of ten (10) years at ten (10%) per cent per annum, compounded monthly. However, only the sum of P323,806.94 was actually released to the petitioner. It turned out that the parcels of land offered as collaterals were encumbered in favor of other persons, to wit: TCT No. 74841 was mortgaged to Dr. Rosendo Llamas for P323,360.00; and TCT No. 67372 (Caloocan) was under mortgage to Cenona Reyes for P28,000.00. Lot 109, still untitled, was under sales contract with the Bureau of Lands for P3,600.00.

To effect the release of TCT 74641, the GSIS made the first release of the loan in the amount of P323,360.00 direct to Dr. Rosendo Llamas but for the account of petitioner Marina D. Nartates. The remaining balance of P27,000.00 was not released to petitioner in view of her failure to submit the titles to the additional collaterals which form part of the security for the approved loan of P350,000.00. On April 29, 1970, the GSIS advised petitioner that her account at the amount already released was being closed.

In the meantime, petitioner secured a title over Lot 109, namely TCT No. 104650, issued in her name alone by the Registry of Deeds for Manila on June 2, 1972. Without the knowledge and/or consent of the GSIS, however, she completed the construction of the building, but part of the building encroached on the adjoining Lot 109 and on another lot covered by TCT No. 120922 of the Registry of Deeds for Manila, also issued in her name as a widow.

On January 31, 1974, PD No. 385 was issued requiring all government financial institution to mandatorily foreclose all loans with arrearages, including interests and charges, of at least 20% of the total outstanding obligations. Based on the statement of account obtained from the GSIS, the petitioner's arrearages as of February 12, 1974 was P409,677.12.

Believing that foreclosure of her loan could be forestalled if she complied with the minimum ceiling under PD No. 835 and allegedly relying on the assurances of the Manager, Collection Department of the GSIS that the loan would be restructured if she complied with the 20% ceiling under the decree, the petitioner made the following payments: 1) P50,000.00 on May 17, 1974; 2) P20,000.00 on August 30 1974; and 3) P10,000.00 on March 10-11, 1976. Petitioner claims that she tried to come up with the balance before the deadline given her (March 19, 1976) but she was late by a few minutes and upon arrival at the GSIS to make her payment as arranged, she was told that the foreclosure proceedings had already taken place.

At the foreclosure proceedings held on March 17, 1976, the GSIS was declared the highest bidder for P693,268.93. A certificate of sale was issued to the GSIS on April 5, 1976, and the same was registered on May 6, 1976. On February 3, 1977, or before the expiry date of the one-year redemption period, the GSIS filed a petition ex-parte for the issuance of a writ of possession.

The facts as disclosed by the records show that indeed the petitioner was delinquent in the payment of the mortgage loan. Her arrearages as of March 31, 1975 amounted to P450,635.21. She was given by the GSIS seven (7) days to update her account, but to no avail. On November 6, 1975, the GSIS instituted extrajudicial foreclosure of the mortgage, of which notice was given to petitioner on November 11, 1975. The Sheriff of Manila fixed the date of the public auction sale on March 10, 1976, which was reset to March 17, 1976 upon an "Agreement to Postpone" executed between the petitioner and the GSIS.

There was nothing irregular in the conduct of the foreclosure proceedings. The foreclosure proceedings were conducted in accordance with the procedures established by the law. The petitioner has not questioned the regularity of the foreclosure sale. What petitioner questions in G.R. No. L-47744 is the validity of the writ of possession issued by the Court of First Instance of Manila, Branch IV, on the ground that it was issued before the redemption period fixed by law expired; that the right of the GSIS to foreclose was being questioned in another case (Case No. 108846); and that part of the building foreclosed was built on property of the petitioner not included in the mortgage. Insofar as G.R. No. L-47744 is concerned, we find no merit in petitioner's contention. True, the order for the issuance of a writ of possession was made by the court before the expiry of the period fixed by the law for the redemption of the property, but the court issued the order conditioned upon the filing of a bond by the GSIS. In any event, the period for redemption expired without the petitioner exercising her right of redemption. And with respect to the claim that part of the building is built on land not mortgaged to the GSIS, the respondent court which issued the writ of possession has excluded said portion of the building from the writ.

As regards the questions raised by petitioner in G.R. No. L-47669 with respect to the validity of the foreclosure proceedings, it suffices to say that because of the failure of the petitioner to update the loan inspite of the chances given her by the GSIS, the latter had the right to foreclose the mortgage. PD 835 does not give petitioner the right to have her loan restructured upon payment of 20% of the loan. Besides, petitioner was unable to put up such minimum payment, but even if she did, the GSIS as creditor can lay down the terms and conditions for restructuring the loan. The only question that merits consideration is the contention of the petitioner that the foreclosure is null and void because it included portions of the building standing on lots which, although owned by petitioner, were not mortgaged to the GSIS. Petitioner claims that being controversial, the issue cannot be ventilated in a cadastral court but in a court acting under its ordinary civil jurisdiction.

The fact is undisputed that the spouses Maximo Nartates and Marina D. Nartates applied on December 2, 1964 for a loan of P1 million to finance the construction of a four-storied building on a parcel of land covered by TCT No. 74641, to secure which the spouses offered as collaterals: 1) the lot as well as the building to be erected thereon; 2) the adjoining lot denominated as Lot 109, then still untitled; and 3) a parcel of land in Caloocan City covered by TCT No. 673722. Based on the appraisal of these collaterals, the GSIS approved a loan of P350,000.00. After approval of the loan, the petitioner executed a mortgage contract on December 12, 1967, conveying by way of first mortgage in favor of the GSIS the following parcels of land together with the building/s and other improvements existing, or which may thereafter be constructed thereon: 1) a parcel of land with an area of 205.79 square meters, more or less, covered by TCT No. 74641 of the Registry of Deeds of Manila; 2) Lot 109, then still untitled, with an area of 104.06 square meters located in Manila (adjacent to the foregoing parcel of land); and 3) a parcel of land in Caloocan City containing an area of 487 square meters more or less, covered by TCT No. 673222. It turned out, however, that the foregoing parcels of land had liens in favor of other creditors; hence, the GSIS made the first release of the loan in the amount of P323,360.00 to Dr. Rosendo Llamas for the account of petitioner Marina D. Nartates in order to effect the release of TCT No. 74641 so that the GSIS mortgage could be registered. With respect to Lot 109, petitioner was indebted to the Bureau of Lands under a Sales Contract in the amount of P3,600.00; since the lot was still untitled, the mortgage contract could not be registered, hence the balance of the approved loan was not released to petitioner. Subsequently, petitioner secured a title to said lot, namely, TCT No. 104650 issued by the Registry of Deeds of Manila in her name as widow. An adverse claim was filed by the GSIS and annotated on TCT 104650 on October 1, 1975 stating that the property was mortgaged to the GSIS in the sum of P350,000.00.

Respondent GSIS claims that without its knowledge and consent, the construction of the building was completed by petitioner with portions thereof encroaching on the adjoining lot No. 109 and another adjacent lot covered by TCT No. 120922 of the Registry of Deeds of Manila, was issued in petitioner's name as widow. This fact is not denied or disputed by the petitioner.

Prescinding from the above, we find no merit in the claim of petitioner that the foreclosure by the GSIS of the building in question is null and void. Petitioner's posture that the foreclosure of the entire building suffers from legal infirmity because a portion thereof stands on land not mortgaged by her to the GSIS cannot be sustained, both from the standpoint of law and equity. Lot No. 109 on which a portion of the building stands was included in the mortgage contract of December 12, 1967, although at the time the mortgage could not be registered because the lot was still untitled and subject to a lien in favor of the Bureau of Lands; however, subsequently, the land was titled in petitioner's name, but she did not deliver the title to the GSIS, thereby compelling the GSIS to file and annotate an adverse claim on TCT No. 104650. Moreover, the petitioner's actuations and conduct violate the precepts of Article 19 of the Civil Code which provides that every person must, in the exercise of his rights and performance of his duties, act with justice, give everyone his due, and observe honesty and good faith. Petitioner was far from honest and fair in her dealings and conduct, first, in failing or refusing to give her title to Lot 109 to the GSIS to enable it to register the mortgage contract, and second, in extending the construction of the building to the adjoining lots owned by her, without the knowledge and consent of the GSIS. She should not be allowed to question the legality of the foreclosure of the building.

Considering that from the standpoint of both law and equity, based on undisputed facts on record, the foreclosure of the building in question suffers from no legal infirmity, the Court finds it unnecessary to remand the case to the court a quo in Civil Case No. 108846 (for annulment of the mortgage) for further proceedings; however, the GSIS must pay the petitioner the fair market value of the parcels of land covered by TCT Nos. 102922 and 104650 on which a portion of the foreclosed building stands.

Accordingly, the petitions in G.R. Nos. L-47666 and L-47744 are hereby DISMISSED, without prejudice to having the court a quo in Civil Case No. 108846 determine, if the parties are unable to agree, the fair price of the parcels of land covered by TCT No. 102927 and TCT No. 104650 which the GSIS must pay the petitioner for the said lots.

SO ORDERED.

Melencio-Herrera, Paras, Padilla, and Sarmiento, JJ., concur.

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