

PABLO R. TONGCO, ET AL., PETITIONERS, VS. COURT OF APPEALS, FORTUNATO CRUZ, ET AL., RESPONDENTS.

G.R. Nos. L-23176 & 23177. July 20, 1967

Ponente: REYES, J. B. L., Actg. C.J.

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REYES, J. B. L., Actg. C.J.:

This is a petition for review of the decision of the Court of Appeals, which reversed the joint decision of the Court of First Instance of Rizal in the certiorari case, entitled "Fortunato Cruz, et al. vs. Pablo R. Tongco, et al." (Civ. Case No. 4942) and the action for recovery of possession of real property, entitled "Pablo R. Tongco vs. Fortunato Cruz, et al." (Civ. Case No. 4991).

The facts of these cases, as found by the Court of Appeals, may be stated as follows:

Lot No. 26, Block 3 of the Tambobong Estate, formerly belonging to the Roman Catholic Archbishop of Manila, was originally leased by one Catalina Guevara who, in 1926, allegedly, donated her lease-hold right to Pablo R. Tongco.

In 1937, Fortunato Cruz leased from Tongco 175 square meters of the abovementioned lot whereon the former built his residential house, paying to the latter monthly rentals therefor. In 1938, his brother Eugenio Cruz, who also built his house on the lot, became a lessee of another portion (of Lot No. 26), with an area of 150 square meters. After the Estate was acquired by the government in 1947, the Cruz brothers, "on instruction of the Rural Progress Administration, continued paying rentals but this time direct to the office of the Rural Progress Administration."

Claiming to be bona-fide tenants and occupants, the Cruz brothers thereafter applied to the Rural Progress Administration for the purchase of the portions of Lot No. 26 occupied by them, which were then referred to as Lots Nos. 26-A and 26-D. The application was opposed by Pablo Tongco, who also filed an application, contend-ing that as lessee thereof, he has preference to purchase the whole of Lot No. 26.

After investigation, the Rural Progress Administration rendered a decision dated November 20, 1950, awarding the property to the following:

Eugenio Cruz.....
 Fortunato Cruz.....
 Jacinto Tongco (brother of Pablo).....
 Pablo Tongco
 150 square meters
 175 " "
 255 " "

On Tongco's motion for reconsideration, the Director of Lands (who acted on the motion in view of the abolition of the Rural Progress Administration), on January 30, 1952, set aside the decision of the Administration and gave due course to Tongco's application to purchase the entire lot. Copy of this decision was received by the brothers Cruz on February 19, 1952 (Rec. on App., p. 18). Their motion to reconsider was denied on July 24, 1952 (Rec. on App., p. 62). On October 28, 1952, the Director of Lands issued an order of execution of his ruling.

To restrain enforcement of the decision and order of execution issued by the Director of Lands, the Cruz brothers instituted on December 18, 1952 (Rec. on App., pp. 18, 19, 62), a prohibition case in the Court of First Instance of Rizal (Civ. Case No. 1966), but this petition was dismissed for failure to exhaust administrative remedies.

Fortunato and Eugenio Cruz then went to the Secretary of Agriculture and Natural Resources praying for the settlement of their conflict with Tongco. Said official, however, treating the petition as an appeal from the ruling of the Director of Lands, of January 30, 1952, denied the same on the ground that the decision appealed from had already become final and executory. This order was affirmed by the President to whom the matter was further appealed, on December 9, 1957.

While the matter was pending consideration of the President, the Land Tenure Administration, which took over the administration of the Tambobong Estate, executed on February 28, 1955, a deed of sale of Lot No. 26 in favor of Pablo Tongco, as a result of which, the latter was able to secure Transfer Certificate of Title No. 57705 in his name.

Upon denial of their petition by the President, the Cruz brothers filed on April 11, 1958, a petition for certiorari in the Court of First Instance of Rizal (Civ. Case No. 4942), charging the respondent Director of Lands of abuse of discretion in approving the application to purchase of respondent Pablo Tongco, and praying for the declaration of nullity of the Director's order of January 30, 1952; of the deed of sale covering Lot No. 26 executed by respondent Land Tenure Administration in favor of Tongco; and of Transfer Certificate of Title No. 57705 consequently issued to the latter. In turn, Pablo Tongco, as registered owner of Lot No. 26, filed in the same Court against the Cruz brothers an action for recovery of possession of the portions of the lot occupied by them. Answering this complaint, the defendants Fortunato and Eugenio Cruz, specifically alleging that the issue of the validity of the awarding of preferential right to purchase the lot to Tongco was the subject of a pending action between them (in Civ. Case No. 4942), manifested that they were incorporating the allegations in their petition in said Civil Case No. 4942 as part of their special and affirmative defenses.

After a joint trial, the lower court rendered a single decision dated March 21, 1959, upholding the ruling of the Director of Lands approving Tongco's application to purchase the whole Lot No. 26. Consequently, the petition for certiorari (in Civ. Case No. 4942) was dismissed, and the defendants Cruz brothers, in Civil Case No. 4991, were ordered to vacate in 90 days the portions of the lot occupied by them, and to pay to plaintiff monthly rentals at the rate of P2.00 and P1.00, respectively, from February 1952 until they shall have vacated the same.

On appeal by the Cruz brothers, the Court of Appeals reversed the joint decision of the trial court, reasoning that appellants were bona fide occupants of the disputed portions of Lot No. 26; that Tongco's having resided in Manila, from 1939 until the Japanese occupation, indicated that he was not in dire need of the whole lot, unlike the Cruz brothers who have their residential houses thereon; that when the appellants-brothers paid their rentals directly to the Rural Progress Administration, they became lessees of the portions occupied by them; that Tongco's failure to object to this lessor-lessee relationship between the Rural Progress Administration and the Cruz brothers, from 1947 to the awarding of the lot in 1950, constituted a waiver of whatever right he might have

over the portions of the lot in controversy. In thus ruling, the appellate court also took into account the fact that Tongco merely acquired the lease-hold right from the original lessee Catalina Guevara, and therefore his situation was not superior to those of the appellants. Further-more, he was found by the Rural Progress Administration to be the lessee of two other lots in the "Longos Estate", also managed by that government entity. Although those two leases no longer appeared in the name of Tongco when the decision was rendered, the Court of Appeals nevertheless considered that fact because, according to said appellate court, the status of the parties should be determined at the time of the filing of the application.

His motion for reconsideration having been denied by the Court of Appeals, Tongco filed the present petition for review, contending that the appellate court erred in not dismissing the appeal in CA-G. R. No. 27736-R (Civ. Case No. 4942), for being out of time; in not finding the decision of the Director of Lands (of January 30, 1952) final and executory; in not finding the appellants guilty of laches; and in reversing the decision of the court a quo.

The issue of the timeliness of the appeal of the certiorari-case was raised by Tongco in the Court of Appeals, first, in a motion to dismiss, and then in his brief. The matter should have been passed upon in the decision now under consideration.

It appears from the records that the Cruz brothers received copy of the joint decision of the trial court on June 29, 1959; that a motion for reconsideration thereof was filed by said defendants on July 6, 1959; that the motion was denied on September 3, 1959, of which de-nial the Cruz brothers were notified on September 7, 1959. As the no-tice of appeal and appeal bond in both cases were filed on September 29, 1959, herein petitioner now claims that at least, with respect to the certiorari-case (Civ. Case No. 4942), the appeal was perfect-ed beyond the reglementary 15-day period prescribed in Section 17, Rule 41 of the old Rules of Court.

We may agree with herein petitioner that the issues in the two cases being different, the Joint Judgment was actually severable. As the periods for appeal in the two cases are also different, separate notices of appeal and appeal bonds should have been filed before the respective periods expired. As it stands, the requisite notice of ap-peal and appeal bond having been filed on the 29th day from notice of the decision, the appeal in the certiorari-case was perfected be-yond the reglementary period.

Be that as it may, the dismissal of the appeal in Civil Case No. 4942 will not render the decision of the Court of Appeals now under review without basis. As previously stated, the issue of the validity of the order of the Director of Lands, giving preference to Tongco in the purchase of Lot No. 26, was also directly placed in issue in the action for recovery when the Cruz brothers contested Tongco's owner-ship of the disputed portions of the land. It may likewise be pointed out that, unlike the certiorari-case which was submitted for decision on a question of law, Civil Case No. 4991 was submitted for decision on the evidence adduced by the parties. It results that, when the plaintiff's prayer was granted in Civil Case No. 4991 and therein defendants were ordered to vacate the premises, the sale of the whole Lot No. 26 to Tongco was actually affirmed and defendants' argument that they have rights over the portions occupied by them, rejected. In the appeal, the regularity and validity of the orders of the Director of Lands, bases of the sale of the lot to Tongco, were extensively discussed by the parties. The Court of Appeals, therefore, properly acquired jurisdiction to pass upon the question of the validity of the purchase of the lot by Tongco.

The contention that the decision of the Director of Lands, dated January 30, 1952, was final and executory, because the decision of said official is appealable to the Secretary of Agriculture and Natural Resources in 60 days, is without merit. For it must be borne in mind that a suit instituted to secure judicial review of administrative ac-tion or orders must necessarily presuppose that the questioned acts have already become final, or that the remedy of appeal is not avail-able. The special civil actions filed by the Cruz brothers (the pro-hibition case first,

and the certiorari-petition later) were precisely of this nature, and the respondent public officials were therein charged with abuse of discretion that called for judicial revision.

And it appearing that there was no let-up in the efforts of the Cruz brothers, who resorted to both judicial and administrative means to secure recognition of their rights over the small areas on which their houses stood, said petitioners cannot be charged either with being guilty of laches.

The basic issue in this case now is who, between the lessee and the sub-lessees and actual occupants, has the preferential right to purchase the disputed lots.

In previous cases decided by this Court,[1] this question was resolved in favor of the lessee, for the reason that Section 1 of Commonwealth Act 539 established the order of preference in the selling or awarding of private lots: to the bona fide tenant, the occupant, and lastly, the private individual. It may be observed, however, that in said cases, the ruling was based on the particular circumstances obtaining therein. Thus, in the Cruz case, there was a finding that the sub-lessees not only assured the lessee that they will not dispute her right to the land, but one of them even executed a deed re-nouncing whatever right he may have over the same. In the Lauchang case, the lessee owned no other property but the inchoate right (lease-hold right) over the lot subject of the controversy, which has an area of 480 square meters. On the other hand, in the case of Gutierrez vs. Santos, et al., G. R. No. L-12253, March 28, 1960, the question was resolved in favor of the sub-lessees, because the lessee was found to have already acquired from the government four other lots, with an aggregate area of 2,559 square meters. Here, the record shows that Tongco was found by the Rural Progress Administration to be the lessee of other lots in the Longos Estate, also managed by the R. P. A.

Moreover, in the present case, Lot No. 26 has 872 square meters; 325 square meters of which are occupied by the Cruz brothers, and 517 square meters, by petitioner Tongco and his brother. As found by the Court of Appeals, although prior to 1947 the Cruz brothers were sub-lessees of Tongco, paying monthly rentals to him, when the Hacienda Tambobong was purchased by the government, the latter, through the Rural Progress Administration, required the occupants Cruz brothers to pay the rentals directly to that office. There being no proof that the lease of the whole lot in favor of Tongco was recognized by the government, the requirement that the occupants pay the rentals directly to that office may be considered as a termination of that lease of the entire lot. It follows, therefore, that when the Cruz brothers filed their application, they, as bona fide occupants, had preferential rights to purchase Lots Nos. 26-A and 27-D occupied by them.

It might be that the order of the Director of Lands, reversing that of the Rural Progress Administration and holding Tongco to have preferential right to purchase the whole lot was issued pursuant to the rules and regulations issued by him in 1951 governing the acquisition and disposition of landed estates (Lands Adm. Order No. R-3, dated October 19, 1951 - 51 O. G. No. 12, pp. 6075-6078). However, as the application of the Cruz brothers had been previously filed and found to be in order, in accordance with the rules and procedure then observed by the Rural Progress Administration, more than thirteen months earlier, the subsequent revocation of that approval by the Director of Lands by virtue of regulations posteriorly enacted amounted to an abuse of discretion, since the qualification of the Cruz brothers as purchase-applicants should be determined as of the time their applications were submitted.

WHEREFORE, finding no error in the ruling of the Court of Appeals reversing that of the court a quo (in Civil Case No. 4991), the same is hereby affirmed. Herein respondents Cruz brothers are declared entitled to purchase the portions of Lot No. 26, referred to as Lots 26-A and 26-D in their application, and petitioner Tongco is ordered to reconvey said lots to the former. The appeal in G. R. No. L-23176 (Civil Case No. 4942) is dismissed.

Costs against respondents Cruz brothers in G. R. No. L-23176 (CA-G. R. No. 27736-R), and against petitioner

Tongco in G. R. No. L-23177 (CA-G. R. No. 27737-R),

SO ORDERED.

Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, and Fernando, JJ., concur.
Concepcion, C.J., Angeles, and Dizon, JJ., did not take part.

[1] Santiago, et al. vs. Cruz, et al., G. R. Nos. L-8271-72, Dec. 29, 1955; Tiangco vs. Lauchang, G. R. Nos. L-17598 and L--17694, Sept. 30, 1963.

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