

**THE GOVERNMENT SERVICE INSURANCE SYSTEM, ROMAN A. CRUZ, JR., SHERIFF OF MANILA AND SHERIFF OF QUEZON CITY, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, HONORABLE AUGUSTO L. ...**

*G.R. No. L-45074. April 30, 1987*

Ponente: PARAS, J.

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**PARAS, J.:**

Through this petition for review on certiorari, petitioners seek the review and annulment of the decision[\*] of respondent Court of Appeals promulgated on November 5, 1976 in CA-G.R. No. SP-04423 which dismissed their petition for lack of merit and lifted the temporary restraining order (not writ of preliminary injunction) to maintain the status quo by enjoining the respondent judge of the then Court of First Instance (CFI) of Rizal[\*\*] from proceeding with the trial of the case pending therein (pp. 23 and 93, rec.).

The records show that from 1958 to 1965, private respondent Felipe Ang obtained from petitioner Government Service Insurance System (GSIS) five loans needed to construct a twelve-story building. These loans were secured by real estate mortgages constituted over parcels of land owned by the aforementioned private respondent. By August 24, 1965, private respondent's loans had accumulated to the staggering amount of P7,175,000.00 (p. 94, rec.).

When private respondent again applied for a refinancing or adjustment loan of P5,000,000 on November 15, 1967, the GSIS Board disapproved the same (even as such loan was favorably recommended by its Commercial and Industrial Loans and Investments Department upon a finding that the said loan cannot be considered as one applied for pursuant to the policy of refinancing distressed industries since the refinancing of commercial buildings does not fall under "the essentiality of an enterprise following a system of priorities." (pp. 16 and 18, rec.) Thus, too, per GSIS Resolution No. 922 dated June 26, 1967 which provides in No. 5 thereof "that refinancing of commercial buildings in our portfolio or new applications should not be considered," the aforesaid loan was disapproved, as aforesaid (p. 18, rec.).

Consequently, when informed that private respondent had been in arrears in the payment of his accounts, the GSIS Board, after proper deliberation, decided to instruct and did instruct its Legal Department (thru Resolution No. 968 dated June 13, 1968) to effect the immediate foreclosure of the mortgaged parcels of private respondent. On October 27, 1971, pursuant to the aforesaid directive, the GSIS requested the sheriffs of Manila and Quezon City to proceed with the foreclosure of the mortgaged properties (pp. 19 and 97, rec.).

On January 3, 1972, private respondent filed a complaint with prayer for a writ of preliminary injunction against herein petitioners before the then CFI of Rizal at Quezon City. The writ prayed for sought to permanently restrain petitioners (then defendants) from foreclosing on the mortgaged lots, to order the GSIS to furnish private respondent (then plaintiff) with an updated statement of his accounts and to give him the benefit of extension of time allegedly authorized under Resolution No. 2638 of the GSIS Board (pp. 15 and 97, rec.)

After the petitioners answered the said complaint, the trial court conducted a hearing on the motion for the issuance of the writ after which it issued an order on June 30, 1972, granting the writ of preliminary injunction restraining the petitioners or their agents from foreclosing the mortgage (pp. 21 and 96, rec.).

On August 17, 1972, petitioners moved for reconsideration of the above order which motion the lower court denied. Petitioners then filed their second motion for reconsideration which the said court granted on April 30, 1973. Also, it ordered the setting aside of the writ of preliminary injunction. (pp. 21, 22 and 96, rec.).

On June 8, 1973, private respondent moved for reconsideration of the aforesaid order of April 30, 1973. During the pendency of this motion, he filed a petition for certiorari (with respondent Court of Appeals) with prayer for a writ of preliminary injunction. Said petition was docketed as CA-G.R. No. SP-02174. (pp. 22 and 96, rec.).

The respondent Court of Appeals issued a temporary restraining order on July 9, 1973 enjoining the then respondent trial court judge from proceeding with the foreclosure of the mortgaged parcels. However, on October 11, 1973, after oral arguments and submission of memoranda, the appellate court issued a resolution which denied private respondent's application for a writ of preliminary injunction and lifted the temporary restraining order it had issued on July 9, 1973. Private respondent filed his first and second motions for reconsideration of the aforesaid resolution both of which were denied by the respondent appellate court. (pp. 22, 96 and 98, rec.)

On November 22, 1973, private respondent filed with this Court a petition for certiorari with preliminary injunction which sought the annulment and setting aside of the October 11, 1973 resolution, and the restraining of the GSIS from proceeding with the foreclosure. This Court dismissed the petition for lack of merit. Again, private respondent moved for reconsideration of such dismissal but the same was also denied. (pp. 22 and 98, rec.)

The GSIS finally instituted foreclosure proceedings which resulted in a public auction sale held on March 21, 1974 with respect to properties located in Manila, and on March 29, 1974, with regard to those situated in Quezon City, with petitioner GSIS itself turning out as the highest bidder. The certificates of sale were correspondingly issued by the Manila and Quezon City Sheriffs. (pp. 23 and 98, rec.)

On July 26, 1974, petitioner GSIS moved for the dismissal of the complaint (pending in the then CFI of Rizal, Branch 31) anchored principally on the ground that the issues in the case have become moot and academic. (pp. 24 and 98, rec.)

In its order issued on August 26, 1974, the trial court denied the aforesaid motion to dismiss for the reason that "the dissolution of the writ of preliminary injunction, admittedly an ancillary remedy only, certainly did not render moot and academic the plaintiff's main cause of action." (pp. 24 and 99, rec.)

Petitioners filed their second motion to dismiss the said complaint which private respondent again opposed and which the trial court denied in its February 14, 1975 order. Petitioners likewise moved for reconsideration of this order which the trial court also denied in its order of April 23, 1975. (pp. 25, 27 and 99, rec.).

Thus, on July 21, 1975, petitioners appealed to respondent appellate court basically contending that the then CFI judge acted with grave abuse of discretion or without or in excess of jurisdiction in issuing the assailed orders of August 26, 1974 and February 14, 1975. In lieu of these orders, petitioners prayed for the issuance of another order which would dismiss the complaint in the trial court. (pp. 29, 60 and 79, rec.)

Finally, on November 5, 1976, respondent appellate court rendered the questioned decision which dismissed the petition for lack of merit and lifted the temporary restraining order it had earlier issued. (pp. 29 and 83, rec.)

Hence, this appeal from the aforesaid decision.

Petitioners impute to respondent Court of Appeals the following alleged errors:

1. The respondent Court of Appeals erred in failing to evaluate the evidence presented in Civil Case No. Q-16173 and not declaring that they were not sufficient to entitle private respondent (then plaintiff) to the reliefs sought in the complaint.
2. The respondent appellate court erred in not finding and declaring the respondent trial judge as having acted with grave abuse of discretion and/or without or in excess of jurisdiction in denying the defendants' demurrer to the evidence.
3. The respondent appellate court erred in not setting aside the order of respondent trial judge denying the defendants' (now petitioners) demurrer to the evidence and, consequently, in not dismissing the complainant in Civil Case No. Q-16173.
4. The respondent Court of Appeals erred in denying the writ of certiorari and dismissing the petition filed by herein petitioners in CA-G.R. No. SP-04423.

Private respondent, on the other hand, claims that petitioners have falsely represented that respondent Court of Appeals did not evaluate the evidence presented in the case. Private respondent thus reacts by asserting that a "casual reading of the decision appealed from discloses that respondent Court of Appeals duly considered the whole gamut of evidence adduced in the case, and even delved into the history of the proceedings from its inception through the various proceedings before the appellate courts (sic) and down to the challenged order of respondent Judge (what deeper revaluation did petitioners expect?) before reaching its conclusion that respondent Judge did not commit grave abuse of discretion, as claimed."

Private respondent likewise avers that the evidence relied upon by petitioners, even if duly considered by the trial court, would not alter its denial of the demurrer to the evidence. He further maintains that the defenses interposed by petitioners cannot constitute a valid ground for dismissal upon demurrer to the evidence considering that his evidence, particularly his declarations on the witness stand, give positive identification for all the reliefs sought in his complaint such that, if no countervailing proofs were to be adduced by petitioners, a judgment in his favor corresponding to such reliefs would be absolutely warranted.

Private respondent finally submits that the question as to whether or not "upon the facts and the law plaintiff has shown no relief" is a matter addressed to the sound discretion of the trial court. It is to this discretion that a demurrer to the evidence is directed. But the mere filing of such a demurrer does not render it mandatory upon the trial judge to accept the petitioners' position as gospel truth. Thus, too, he theorizes that the mere filing of the demurrer to the evidence created no positive duty upon either (the trial and appellate court) to grant a dismissal premised on an alleged evasion of a positive duty or a usual refusal to perform a duty enjoined so as to make their decisions as having been rendered in grave abuse of discretion.

Notably, it should be stated at this point, that this case is one of the several cases which have stemmed from the much prolonged controversy between petitioner GSIS and private respondent Ang over the mortgages entered into by the aforementioned parties securing the numerous loans granted by the former to the latter. These mortgages cover several parcels of land and improvements thereon located in Manila and Quezon City.

One of these intertwined cases is G.R. No. L-41811 entitled "Government Service Insurance System (GSIS) vs. The Honorable Court of Appeals, Felipe T. Ang and Eufrocina C. Toby," a petition which assailed the decision of the Court of Appeals dated December 18, 1975 in CA G.R. No. Q4354-SP. Said decision annulled and set aside the writ of possession issued to petitioner GSIS in LRC (GLRO) Record Nos. 219 and 108 of the former CFI of Manila, Branch IV. Petitioner GSIS appealed from the aforesaid decision on a petition for certiorari. While this petition was pending in this Court, the Court of Appeals rendered the above questioned decision. By reason of that decision, petitioner GSIS filed with this Court a supplemental petition which raised the issue of whether the

System is entitled, during the period of redemption, to the possession of the property it purchased at the foreclosure sale effected under Act 3135.

Significantly, this Court rendered a decision in the aforecited case on November 10, 1986 reversing the decision of the Court of Appeals. In reinstating the writ of possession issued pursuant to the order of the then CFI of Manila, this Court held:

"In the present case the period of redemption had already long lapsed with no redemption having been made. In fact, the titles to all the properties purchased at the auction sale were already transferred to and registered in the name of the GSIS. This being so, there is no justifiable ground whatsoever why the Writ of Possession would not be issued."

In the light of the aforestated decision, this case, which involves the same parties and the same subject matter as those involved in L-41811, has become moot and academic. The same decision resolves once and for all the varied issues which have been raised in the related cases between petitioner GSIS and private respondent.

WHEREFORE, this petition is hereby GRANTED and the case pending in the Regional Trial Court of Rizal Branch 31 in Quezon City is deemed TERMINATED for being moot and academic.

**SO ORDERED.**

Fernan, (Chairman), Gutierrez, Jr., Padilla, Bidin, and Cortes, JJ., concur.

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[\*] Penned by Justice Godofredo P. Ramos and concurred in by Justices Andres Reyes and Samuel F. Reyes.

[\*\*] Presided over by Judge Augusto L. Valencia.

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