

REYNALDO MAGAT, COMPLAINANT, VS. JUDGE GREGORIO G. PIMENTEL, JR., CLERK OF COURT AVELINO S. BUAN, SHERIFF FLORENCIO S. RAZON, REGIONAL TRIAL COURT, BRANCH 50, GUAGUA, PAMPANGA, R...

A.M. No. RTJ-00-1531 (Formerly OCA IPI No. 99-782-RTJ). November 28, 2000

Ponente: VITUG, J.

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VITUG, J.:

This administrative case originated from an affidavit-complaint filed by Reynaldo Magat charging Judge Gregorio G. Pimentel, Jr., Branch Clerk of Court Avelino S. Buan, and Sheriff Florencio Razon, all of the Regional Trial Court ("RTC") of Guagua, Pampanga, Branch 50, with misconduct and grave abuse of discretion.

It would appear that Civil Case No. 687, entitled "Manuelito Bagasina and Catalina Bagasina vs. Mr. and Mrs. Vicente Magat," was decided by the Municipal Trial Court of Sasmuan, Pampanga, in favor of the plaintiffs and against the defendants, ordering the latter "and all persons claiming authority under them to vacate the property subject of the x x x complaint x x x and to surrender complete possession thereof to plaintiffs." A timely appeal to the Guagua RTC was made by the defendants and the case, docketed Civil Case No. G-254, was raffled to the sala of respondent Judge. The Bagasinas sought for an "Immediate Execution of Judgment" pending appeal which respondent Judge granted. The defendants failed to vacate the premises, however, prompting the plaintiffs to file a "Motion for Special Order of Demolition of Improvements" but action thereon was deferred until after the appeal itself would have been resolved. On 03 August 1998, the RTC affirmed the assailed decision and a hearing on the "Motion for Special Order for Demolition of Improvements" followed. The motion was granted in an order of 10 March 1999, and the defendants were given twenty (20) days from receipt of the order within which to remove and/or demolish the improvements made and constructed by them or their agents on the property subject matter of the case. Still, the defendants failed to comply. Finally, a writ of demolition was issued on 26 April 1999. The Sheriff, however, failed to enforce the order due to its failure to specify the structures and improvements to be demolished. The plaintiffs then filed an "Ex-parte Motion to Specify the Structures/Improvements to be Demolished and for Ocular Inspection." In an order, dated 06 July 1999, respondent Judge granted the motion and directed the issuance of a second writ of demolition, thus:

WHEREFORE, let a Writ of Demolition issue commanding the Sheriff to cause the removal and/or demolition not only of the structures/improvements made and constructed by defendants-spouses Vicente and Virginia Magat but also the structures made and constructed by Joe and Maria Fe Magat, Reynaldo and Dominga Maninang and Tomas and Yoly Angeles which structures are adjacent and contiguous to that constructed by the defendants-spouses.

On 27 July 1999, respondent Sheriff, with the assistance of several persons and armed men in uniform, demolished the houses pursuant to the writ of demolition. Among the houses affected were those of Jesus Tungcab and herein complainant Reynaldo Magat.

In his administrative complaint, Reynaldo Magat averred that the demolition of his house constitutes grave misconduct, as well as grave abuse of discretion, on the part of respondents; he declared that -

"1. His name was not listed in the Writ of Demolition issued by respondent Clerk of Court on July 26, 1999. His name was merely mistaken for that of Reynaldo Maninang.

"2. Except for Mr. and Mrs. Vicente Magat, all the other persons whose houses were demolished were not parties to the unlawful detainer case, nor were they named defendants in the complaint filed by the plaintiffs. Neither did they receive any summons or court orders or processes.

"3. The Order issued by respondent Judge on July 6, 1999, ordering the demolition of the additional houses pursuant to plaintiffs' 'Ex Parte Motion to Specify the Structures/Improvements To be Demolished and For Ocular Inspection' is arbitrary and violative of the demolition victims' constitutional right to due process because they are strangers to the case."

Respondents submitted their joint comment on the complaint, claiming that -

"1. It is not true that the persons whose houses were demolished were not parties to the unlawful detainer case for, as early as April 4, 1996, when the case was filed, John Does and Peter Does, representing all persons claiming authority under the defendants Mr. and Mrs. Vicente Magat, were included in the complaint. As a matter of fact, the decision of the MTC, Sasmuan, Pampanga, explicitly ordered the defendants and all persons claiming authority under them to vacate the property. Also, the Order of respondent Judge dated March 10, 1999, granting the plaintiffs' 'Motion For Special Order For Demolition of Improvements' directed the defendants-spouses to remove and/or demolish the improvements made and constructed by them and their agents on the property subject of the case.

"2. It is not true that complainant's name has been mistaken for that of Reynaldo Maninang. The mistake has been brought about by the inadvertent omission of some words when the 'Ex Parte Motion to Specify the Structures/Improvements to be Demolished and For Ocular Inspection' was copied into the Order of the Court dated July 6, 1999 and the Writ of Execution dated July 26, 1999. While the Ex Parte Motion enumerated the persons whose structures and improvements are to be demolished as follows:

- a) Vicente and Virginia Magat
- b) Joe Velasco and Maria Fe Magat
- c) Reynaldo and Lorenza Magat
- d) Pablo and Dominga Maninang
- e) Tomas and Yoly Angeles

the Order of July 6, 1999 and the Writ of Execution, through honest mistake, enumerated the names in this manner:

- a) Vicente and Virginia Magat
- b) Joe and Maria Fe Magat
- c) Reynaldo () and Dominga Maninang
- d) Tomas and Yoly Angeles

thereby omitting the words (marked in parentheses): 'and Lorenza Magat; Pablo x x.'

"3. Assuming that the persons whose houses were demolished were not made parties-defendants to the case, the court's process is still enforceable against them since a writ of execution issued in a proceeding for forcible

entry and unlawful detainer binds the defendant and his privies, though the latter have not been made parties-defendants therein. (36 CJS 210). Therefore, a judgment of eviction against the defendants-spouses affects, and is binding against, those who are acting for and in behalf of said defendants and/or those who claim rights and authority under them (Tan vs. Tuazon, 57 O.G. 6259; Gozon vs. dela Rosa, 440 O.G. 1225).

"4. Only four (4) structures were actually demolished. One or two of these structures may have been shared by two or more families, hence, complainant's reference to six (6) houses which were allegedly demolished.

"5. When the Writ of Execution pending appeal was enforced on November 20, 1997, only two (2) structures were standing on the property. Other structures contiguous and adjacent to the old structures sprouted thereafter to render ineffective and nugatory the decision of the MTC of Sasmuan, Pampanga."

In reply, complainant countered:

"1. Respondent's negligence resulted in the demolition of six (6) instead of four (4) houses, because they failed to conduct an ocular inspection of the subject property as prayed for by the plaintiffs in their 'Ex Parte Motion to Specify the Structures/Improvements to be Demolished and for Ocular Inspection.'

"2. Respondent Judge failed, out of ignorance, to require the plaintiffs to present a plan of their titled property so that the court can determine where the property subject of the case, as well as the houses to be demolished were exactly located. Also, despite knowing that the plaintiffs have not established such fact (exact location of the property), respondent Judge, once again, out of ignorance, sustained the plaintiffs' manifestation to dispense with the ocular inspection, an essential element in ejectment.

"3. After the issuance of the first writ of demolition on April 28, 1999, and before the issuance of the second one on July 26, 1999, respondents already knew that the houses to be demolished were outside the subject property, otherwise, they would not have deleted the addresses of the defendants and the other victims of the demolition to give the sheriff unlimited authority to carry out the demolition."

In a memorandum to Chief Justice Hilario G. Davide, Jr., the Office of the Court Administrator ("OCA"), through Senior Deputy Court Administrator Reynaldo L. Suarez, with Court Administrator Alfredo L. Benipayo recommending approval, found respondent Sheriff guilty of abuse of discretion for his arbitrary execution of the writ of demolition and recommended that he be made to pay a fine of P1,000.00.

The Court sustains the findings of the OCA.

The 06th July 1999 order of respondent Judge, among other things, directed the issuance of a writ of demolition "commanding the Sheriff to cause the removal and/or demolition not only of the structures/improvements made and constructed by defendants-spouses Vicente and Virginia Magat but also the structures made and constructed by Joe and Maria Fe Magat, Reynaldo and Dominga Maninang and Tomas and Yoly Angeles which structures are adjacent and contiguous to that constructed by the defendants-spouses." [1] Clearly, the name of complainant Reynaldo Magat was not included in the court order. Nevertheless, a further reading of the order, particularly paragraph 4 thereof -

"(T)he Decision of the Municipal Trial Court of Sasmuan, Pampanga, dated May 8, 1997, as affirmed by this Court, ordered the defendants and all persons claiming authority under them to vacate the property subject of the case and to surrender complete possession thereof to plaintiffs, follows necessarily that the defendants' sons, daughters and corresponding in-laws, namely Joe Velasco and Maria Fe Magat, Reynaldo and Lorenza Magat, Pablo and Dominga Maninang and Tomas Angeles shall vacate the property and to remove and/or demolish the improvements/ structures made and constructed by them as the latter derive their rights and/or claim their authority from defendants-spouses" -

would provide some basis for the contention of respondents that the name of complainant was only inadvertently omitted from the list.

Be that as it may, the demolition of complainant's house would still not be lawful. In *Olac vs. Court of Appeals*,^[2] the Court has said:

"The dispositive portion or the fallo is what actually constitutes the resolution of the court and which is the subject of execution, although the other parts of the decision may be resorted to in order to determine the ratio decidendi for such a resolution. Where there is conflict between the dispositive part and the opinion of the court contained in the text of the decision, the former must prevail over the latter on the theory that the dispositive portion is the final order while the opinion is merely a statement ordering nothing. Hence execution must conform more particularly to that ordained or decreed in the dispositive portion of the decision."^[3]

Since the name of complainant is nowhere indicated in the dispositive portion of the decision, he could not be covered by the writ of demolition without a proper amendment or correction thereon being first undertaken.

The Court agrees with the OCA that respondent Judge and respondent Clerk of Court have had no hand in the execution of the writ of demolition. The liability for the execution of the writ lies with respondent Sheriff alone. The Court finds it necessary to reiterate that Sheriffs and deputy-sheriffs, being ranking officers of the court and agents of the law, must discharge their duties with great care and diligence. In serving and implementing court writs, as well as processes and orders of the court, they cannot afford to err without affecting adversely the proper dispensation of justice.^[4]

The OCA observes that respondent Judge, based on the records of this case, has acted with gross ignorance of the law when he deferred action on the "Motion for Special Order for Demolition of Improvements" without a supersedeas bond being first filed by the defendants and when he himself ordered the execution of judgment, after affirming the decision of the court a quo, instead of remanding the case for execution. Elucidates the OCA:

"In the first place, his act of deferring the resolution of plaintiff-appellees' 'Motion for Special Order For Demolition of Improvements' constitutes ignorance of the law. Section 19, Rule 70 of the Revised Rules of Court provides, among others, that 'if judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant, to stay execution, files a supersedeas bond.' Indeed, basic is the rule that in forcible entry and unlawful detainer cases, the execution of the judgment in favor of the plaintiff is a matter of right and mandatory. The duty to order the immediate execution is ministerial and imperative; it cannot be avoided. The only way to stay execution is by perfecting an appeal from the decision and filing a supersedeas bond, depositing from time to time with the Regional Trial Court, during the pendency of such appeal, the amounts of rent or the reasonable value for the use and occupation of the property as fixed by the court of origin. The reason for this is to prevent further damages to the plaintiff caused by the loss of his possession of the property (*Hualam Construction and Development Corp. vs. Court of Appeals*, 214 SCRA 612 [1992]).

"Respondent Judge should have thus ruled on the plaintiff-appellees' motion instead of deferring resolution thereon to await the outcome of the appeal. The records of the case do not disclose that a supersedeas bond had been filed by the defendants to stay execution pending appeal. In fact, the evidence of the case tends to show that none has been filed, for when 'Notice For Immediate Execution of Judgment' was filed by the plaintiff-appellee on September 1, 1997, respondent Judge, through an Order dated September 5, 1997, directed the issuance of a Writ of Execution, which writ was issued on September 10, 1997. Surely, if a supersedeas bond had been filed, no writ of execution would have been issued. One then wonders why, after directing the issuance of a writ of execution, Judge Pimentel had to defer action on the motion for special order until the appealed case has been resolved.

Respondent Judge should have simply ascertained from the records the veracity of plaintiff-appellees' allegations in their motion, and on that basis, resolved the motion.

"Likewise, Judge Pimentel's act of proceeding with the execution of the judgment appealed from, by directing the issuance of a writ of demolition after affirming in toto the decision of the lower court, is indicative of ignorance of the law. In ejectment cases, the rule is explicit that the execution of the judgment, or the issuance of a demolition order, falls within the jurisdiction of the municipal trial court which rendered the decision. The appellate court which affirms a decision brought before it on appeal cannot decree its execution in the guise of an execution of the affirming decision. The only exception to that is when said appellate court grants an execution pending appeal. (Sy vs. Romero, 214 SCRA 187 [1992]). In the case at bar, however, it cannot be claimed that the execution ordered by respondent Judge is one pending appeal. Judgment, affirming the lower court's decision, had already been rendered before the order resolving the motion for special order and directing the issuance of a writ of demolition was given. The decision of the appellate court was rendered on August 5, 1998. The Order directing the issuance of a writ of demolition was made on April 26, 1999. By the latter date, therefore, the judgment of the RTC had already become final and executory, depriving the said court of jurisdiction to issue the order. It is to be noted that no appeal was interposed by the defendants from the judgment of the Regional Trial Court. But even assuming that one had been filed, the proper court to execute the judgment would still be the Municipal Trial Court of Sasmuan, Pampanga. The rule is that if the judgment of the MTC is appealed to the RTC and the decision of the latter is itself elevated to the Court of Appeals, whose decision thereafter became final, the case should be remanded THROUGH the RTC to the MTC for execution (City of Manila vs. Court of Appeals, 204 SCRA 362 [1991]). After affirming the lower court's decision, therefore, respondent Judge should have remanded the records of the case to the MTC of Sasmuan, Pampanga, instead of directing the execution of the case himself."

The Court, nevertheless, adopts the light penalty recommended by the OCA since it is not shown that respondent Judge has acted in bad faith or with malice.

The charges against respondent Clerk of Court should be dismissed; indeed, the issuance of the writ of demolition was merely ministerial on his part.

WHEREFORE, for his utter lack of circumspection, hereinabove recited, Judge Gregorio S. Pimentel is ordered to pay a FINE of Three Thousand (P3,000.00) Pesos; and for his arbitrary execution of the writ of demolition resulting in the demolition of complainant's house, Sheriff Florencio S. Razon is ordered to pay a FINE of One Thousand (P1,000.00) Pesos. The charges against Branch Clerk of Court Avelino S. Buan are dismissed for lack of merit.

SO ORDERED.

Melo, (Chairman), Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Underscoring supplied.

[2] 213 SCRA 321.

[3] At pp. 328-329.

[4] Borsanal, Jr., vs. Montes, 280 SCRA 181, citing NBI vs. Tuliao, 270 SCRA 351 and Vda. de Abellera vs. Dalisay, 268 SCRA 64.

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