

AGAPITO FRANCISCO, ET AL., PETITIONERS AND APPELLEES, VS. NATIONAL URBAN PLANNING COMMISSION, INTERVENOR AND APPELLANT.

G. R. No. L-8465. February 28, 1957

Ponente: FELIX, J.

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FELIX, J.:

This is an appeal by the National Urban Planning Commission from an order of Branch IV of the Court of First Instance of Manila approving the subdivision plan submitted by the petitioners Agapito Francisco, et al., despite the objection of said Commission. The facts of the case are as follows :

Petitioners are co-owners of a parcel of land located at 2619 Lico Street Manila, of an area of 2,957 square meters covered by TXJ.T. No. 58176 of the Land Registry of Manila, which is more particularly described as follows:

"A parcel of land (lot No. 18-A of block No. 2848 of the subdivision plan S.W.O. No. 7526 of the cadastral survey of the City of Manila), with the buildings and other improvements thereon, except the building of light materials which belong to Ciriaco Francisco, situated on the SE line of Calle Lico; on the SW by lot No. 18-B, block No. 2848, of the subdivision plan; and on the NW by lots Nos. 19 and 20; on the SE by lots Nos. 17 and 16 of block No. 2848. Beginning at a point marked 1 on plan, being N. 32° 26' E., 678.68 meters from B.L.-L.M. No. 52, thence S. 21° 41' E. 40.99 meters to point of 2; thence S. 70° 24' W., 33.82; to point 3; thence S. 69° 43' W., 33.36 meters to point 4; thence N. 21° E. 87.29 to point 6; thence N. 79° 21' E. 27.91 meters to the point of beginning; containing an area of two thousand nine HUNDRED AND FIFTY SEVEN (2,957) SQUARE METERS MORE OR LESS. All points referred to are indicated on the plan and on the ground points 1 and 2 are marked by old P.L.S./B.L. concrete monuments 3 by an old adobe monument points 4 and 5 by P.L.S./B.L.; and 6 by galvanized iron spike on the wall; bearings true; date of original survey, September 3 to October 25, 1918, and that the approval of the Director of Lands on May 21, 1923.

On January 26, 1954, herein appellees filed with Branch IV of the Court of First Instance of Manila, which by law has supervision over the Land Registration Commission (sec. 174, Revised Administrative Code), a verified petition alleging, among other things, (a) that as co-owners of the parcel of land just described, they had agreed to terminate the existing co-ownership and to partition the property among themselves, having for this purpose subdivided the said land into 12 lots; and (b) that the proposed lots are actually occupied by them as follows: Lot 18-A-1 by Felix Guansing; Lot 18-A-2 by Susana and Virginia Santiago; Lot 18-A-3 by Luz Francisco; Lot 18-A-4 by Agapito Francisco; Lot 18-A-5 by Visitacion Francisco; Lot 18-A-6 by Nicanor Francisco. Lot 18-A-7 by Federico del Rosario; Lot 18-A-8 by Elena T. Villaruz; Lot 18-A-9 by Milagros Francisco; Lot 18-A-11 by Juan, Carlos and Celsueto Francisco; and Lots 18-A-12 and 18-A-10, are private passageways in the names of Juan, Carlos and Nicanor Francisco and Federico del Rosario. So, they prayed that the Director of Lands be ordered to approve subdivision plan Psd-40748 and that separate certificates of title be issued to each of the respective owners appearing in their partition agreement, and for such other remedy or remedies that may be just and equitable under the circumstances.

On February 26, 1954, the National Planning Commission, with leave of court, filed a complaint in intervention contending that the petitioners Agapito Francisco et al., filed said petition without the prior approval of the National Planning Commission and therefore contravenes the provisions of section 8-(b) or Executive Order No. 98, Series of 1946, and Section 2 of the Subdivision Regulations of said body; that the Court has no jurisdiction to issue an order approving said subdivision plan without the prior verification and consent of the National Planning Commission; and for these reasons prayed that the petition be dismissed.

When this complaint in intervention was heard by the Court on May 15, 1954, petitioners-appellees, through counsel, agreed with the representatives of the intervenor-appellant in the presence of and with the conformity of their counsel, Solicitor Mariano M. Trinidad, that the hearing of the case be deferred in the meantime until petitioners-appellees would have filed their subdivision plan, Pgd-40748, with the National Planning Commission for their action. It was further agreed on the same day by both parties that upon notice of the approval or disapproval of the same by intervenors-appellant, the Court should proceed to hear the case on the merits.

In accordance with this agreement, petitioners-appellees, through counsel, wrote a letter on May 17, 1954, to the National Planning Commission asking the latter to approve Pgd-40748 in accordance with the subdivision regulations issued by the National Planning Commission, but on May 18, 1954, said subdivision plan was disapproved by intervenor-appellant on the ground that the frontage, minimum area and alley requirements of the said Office cannot be met by some of the lots in the subdivision plan. Upon receipt of this notice of disapproval by intervenor-appellant, petitioners-appellees, through counsel, submitted the disapproved plan to the Court and asked the latter to let the case take its due course. Whereupon, the National Planning Commission was required by the Court to file its answer to the petition of petitioners-appellees, which the intervenor did on July 2, 1954, wherein the Commission prays that petitioners' subdivision plan be disapproved unless it be amended to conform to the requirements and regulations of the National Planning Commission.

It does not appear from the Record on Appeal that petitioners made a reply to the intervenors' opposition; however, it could be gathered from appellees' brief and the order appealed from that there was such a reply filed which averred that Executive Order No. 98, Series of 1946, creating the National Urban Planning Commission

(which later became the National Planning Commission by virtue of Executive Order No. 367, series of 1960, in pursuance of Republic Act No. 422, known as the Reorganization Act of 1950),

is unconstitutional because the promulgation of the Subdivision Regulations of such Office is an unlawful delegation of legislative powers and deprives the petitioners of their properties without due process of law; that administrative or executive acts, orders or regulations cannot impair substantial rights; and that even granting *arguendo* that said Regulations are constitutional, this case is permissible under section 19, subsection (c) of the same Regulations.

On August 26, 1954, the Court issued an order, the dispositive part of which reads as follows: -

"In view of the foregoing considerations, and taking into account the report of the Chief of the General Land Registration Office and the approval, of the Director of Lands, the answer of the National Planning Commission represented by the Office of the Solicitor General, praying for the disapproval of the plan in question is hereby denied, said subdivision plan Pgd-40748 of the parcels of and described in Transfer Certificate of Title No. 58176 approved and the Register of Deeds of Manila is ordered, upon payment of the fees and registration of the partition agreement executed by the petitioners on April 14, 1954, and acknowledged before Notary Public of the City of Manila, Salome Fellosa-Concepttn, to cancel said Transfer Certificate of Title No. 58176 and to issue new ones in the names of the corresponding owners as appeared in said partition agreement and subdivision plan, provided that no documents or transactions registered or pending registration in his Office will be affected hereby. The Register of Deeds is further ordered to annotate

at the back of the titles to be issued for Lots 18-A-10 and 18-A-12 (private alley) a condition that the same shall not be closed or disposed of, in any manner or form, without the previous approval of the Court,"

It is to be noted that the recommendation of the Director of Lands does not appear in the records and that the order appealed from was predicated on the Court's belief that the subdivision regulations of the National Planning Commission are designed to regulate the subdivision of a tract or parcel of land for sale and for building development and not where the land is subdivided into lots for the purpose of terminating co-ownership; and that even assuming that such regulations are applicable to all cases of subdivision of lands, the case at bar falls within the exception provided for by Section 19, subsection (c) of said Regulations, that is, when strict compliance with those rules will bring about extraordinary hardship.

From this order, the Solicitor General, in representation of the National Planning Commission, brought the matter on appeal to Us and in this instance, he makes the following assignments of error:

- That the lower court erred in approving the subdivision plan submitted by the petitioners without same being first approved by the administrative agency designated by the National Planning Commission;
- That the court erred in holding that the subdivision regulations of the National Planning Commission are not applicable to the case at bar;-
- That the court erred in holding that the present case falls within the exception provided in section 19, subsection (c) of the subdivision regulations; and
- That the lower court erred in granting the petition and not requiring the submission of the subdivision plan to the National Planning Commission for approval.

Executive Order No. 98, Series of 1946, creating the National Urban Planning Commission and denning its powers and duties, was issued on March 11, 1946, by former President Sergio Osmeña (42 Off. Gaz., No. 3, p. 45). Its promulgation was not in connection with any law authorizing him to issue rules and regulations for implementation of the law, but in virtue of the powers vested in him by the Constitution and existing laws (particularly Commonwealth Act No. 671, known as the Emergency Powers of the President, one of which was "to exercise such other powers as may be deemed necessary to enable the Government to fulfill its responsibilities and to maintain and enforce the authority" (Com. Act 671, section 2-4). This law was to take effect upon its approval (December 16, 1941) and "the rules and regulations promulgated thereunder (by the President) shall be in force and effect until the Congress of the Philippines shall otherwise provide". As a result of this provision, all executive orders and rules and regulations issued under the Emergency Powers of the President are deemed to be pieces of legislation in themselves; and as the power granted to the President by said Act No. 671 only became inoperative when Congress met in regular session on May 25, 1946 (J. Antonio Araneta, petitioner, vs. Rafael Dinglasan, et al., respondents, 84 Phil., 368, 45 Off. Gaz. No. 10, p. 4411), Executive Order No. 98 issued by the President on March 11, 1946, necessarily has to be considered.

Later on and in accordance with Republic Act No. 422, Executive Order No. 367, Series of 1950, created the National Planning Commission, which took over the functions of the National Urban Planning Commission, the Capital City Planning Commission (created by Republic Act No. 833), and the Real Property Board created by Administrative Order No. 38, dated July 12, 1947. Consequently, the National Planning Commission is the agency of the Government charged with the preparation of general plans, zoning ordinances and subdivision regulations necessary to accomplish a coordinated and adjusted reconstruction and development of urban areas. To attain this end, said Commission issued a set of Subdivision Regulations requiring, among others, that a lot must have an area of not less than 180 square meters; frontages with a width of at least 12 meters and with alleys not less than 10 meters wide.

There is no dispute that appellees Agapito Francisco et al., are coowners of an undivided parcel of land covered by T. C. T. No. 58176 and desirous of terminating said co-ownership, they executed a partition agreement before a notary public dividing the property into 12 lots, as evidenced by subdivision plan Psd-40748 which was submitted to the Court for approval. It is, however, asserted by intervenor-appellant that said subdivision plan falls short of the requirements of the Subdivision Regulations, for the areas of Lots Nos. 18-A-1, 18-A-2, 18-A-4, and 18-A-8 are less than 180 square meters and the frontages of Lots 18-A-2, 18-A-3, and 18-A-4 and the access road are below the required width. For this reasons, said subdivision plat was disapproved by the Director of Planning on May 18, 1954.

In the lower court, the petitioners contended that said Executive Order No. 98, - creating the National Urban Planning Commission, the functions of which were subsequently (taken over by the National Planning Commission in virtue of Executive Order No. 367, issued in pursuance of Republic Act No. 422, known as the Reorganization Act of 1950, is unconstitutional because the promulgation of the subdivision regulations of the National Planning Commission constitute an unlawful' delegation .of legislative powers and deprives the petitioners of their properties without due process of law, and for the further reason that administrative or executive acts, orders and regulations cannot impair the substantial right of the petitioners granted them by law or by .the Constitution.

Probably because the trial Judge assumed the validity of the aforementioned executive orders, he ignored this contention of petitioners and preferred to decide the case for them on the ground that these subdivision regulations of the National Planning Commission should not be made applicable to the case at bar because they are intended to regulate the subdivision of a tract or parcel of land for sale and for building development and not when the subdivision is made, as in the case at bar, in accordance with a voluntary agreement for the partition and termination of the community of ownership, as well as for the construction or introduction of improvements to their houses built on their respective lots, for such partition is in accordance with the provisions of Articles 494 and 496 of the Civil Code and section 12, Rule 71 of the Rules of Court and is, therefore, evidently valid and legal. His Honor further reasoned out that anyway and even if such rules and regulations were applicable, yet the case at bar would fall within the exception provided in section 19, subsection (c) of said Subdivision Regulations, because of the alleged extraordinary hardships to be suffered by the petitioners, inasmuch as almost all of them had built houses of strong and mixed materials in their respective lots and are now in actual possession of them, paying their real property taxes to the Government on the basis of the subdivision plan Psd-40748.

If We were to agree with this opinion of the trial Judge, We would not need to pass upon the constitutionality or validity of said executive orders. So, We will undertake first to determine the other question at issue, to wit, whether or not these regulations issued by intervenor-appellant are binding on all cases of land subdivision. If they do, then it would follow that the trial Court erred in approving the said subdivision plan in question without the previous approval of the Commission.

There is no question that one of the powers and duties of the National Planning Commission is the making and adoption of regulations which shall govern the subdivision of land in any urban area or part thereof, and by virtue of this grant of authority, the Subdivision Regulations were promulgated. The set of rules, implementing the said grant of authority, furnish the detail that will guide Us in deciding the question at issue.

Although section 1 of the Subdivision Regulations made the general declaration that:

"From and after the date of adoption, these regulations shall govern all subdivisions of land in the Philippines intended for residential commercial and industrial purposes in any urban area or part thereof".

yet the succeeding sections therein shed some light as to the true intentment of these rules. A subdivision as

construed in said regulations is

"the division of a tract or parcel of land into two or more lots, sites or other divisions for the purpose, whether immediate or future, of sale or building development. It includes re-subdivision, and when appropriate to the context, relates to the process of subdividing as to the land or territory subdivided (Article II, section

And the definition given to a subdivider by the same rules is as follows:

"(c). Subdivider means the owner or owners of land or their authorized representatives who propose to carry out a subdivision for the purpose, whether immediate or future of sale or building development" (Article II, section S, Subdivision Regulations).

On the other hand, it is undeniable that the co-owners in this case have the right to terminate voluntarily their existing co-ownership over the land in question, for the Civil Code expressly prescribes:

"Art. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned." Art. 496. Partition may be made by agreement between the parties or by Judicial proceedings. Partition shall be governed by the Rules of Court insofar as they are consistent with this Code".

See also Rule 71, section 12 of the Rules of Court which reads as follows:

"Sec. 12. Neither paramount rights nor amicable partition affected by this rule.—Nothing in this rule contained shall be construed so as to prejudice, defeat, or destroy the right or title of any person claiming the real estate involved in an action for partition by title under any other person, or by title paramount to the title of the parties among whom the partition may have been made; nor so as to restrict or prevent persons holding real estate jointly or in common from making an amicable partition thereof by agreement and suitable instruments of conveyance without recourse to an action".

It is to be noted that at this juncture, that even if we consider the above-mentioned rules and regulations promulgated under the provisions of Executive Order No. 98, as applicable to the case at bar, the Civil Code is a later legislation which entered into effect on August 30, 1950, and in case of conflict between the provisions of said regulations and those of the Civil Code the latter must prevail. A careful examination of the case at bar makes it apparent that in the parcel of land herein involved there is no transfer of ownership, because as prayed for by appellees, the separate certificates of title to be issued in lieu of T.C.T. No. 58176 which covers the entire property, will also be in the name of each of the co-owners. Hence, this process will only have the effect of fixing the specific portions over which each of them may exercise complete ownership, instead of having a right over an indefinite part of the whole property. That the Regulations are intended to govern only subdivisions of land for commercial ends is further manifested in its Section 2, which reads as follows:

"Sec. 2. Any owner of land wishing to subdivide land shall submit to the Director of Planning a plat of the subdivision which shall conform to the requirements set forth in these regulations. No subdivider shall proceed with the SALE of lots of a subdivision and no plat of a subdivision shall be filed with the Director of Lands for approval or recorded in the Office of the Register of Deeds until such plat shall have been approved by the Director of Planning. Applications for plat approval submitted to the District or City Engineer of a town or city in the Philippines shall be forwarded to the Director of Planning together with the district or city engineer's recommendations" (Article I, Subdivision Regulations).

It is to be noted that the submission of the subdivision plat referred to above to the Director of Planning for approval, is a condition precedent before the subdivider could sell the lots of the subdivision. We, therefore, agree with the trial Court in considering these Regulations applicable only to subdivisions of tracts or parcels of land for sale or building development and not to subdivisions like the one in the case at bar.

In view of this conclusion, We need not consider the vital question of the constitutionality of said Executive Orders nor the validity of the rules and regulations promulgated thereunder.

It might be said that according to the rules and regulations above quoted, and even granting the right of petitioners to proceed with the subdivision of their land as agreed upon by them, yet the Court should not have approved the plan by itself but instead it should have ordered appellant National Planning Commission to approve said subdivision plan. This contention may have some weight, but the records show that by letter of May 17, 1954, petitioners submitted the subdivision plan in question to the National Planning Commission and that the latter refused to approve the same. Under these circumstances, the procedure followed by the trial Judge may be accepted as it is in consonance with the provisions of section 10, Rule 39 of the Rules of Court, which reads as follows:

"Sec. 10. Judgment for specific acts; vesting title.—If a judgment directs a party to execute a conveyance of land, or to deliver deeds or other documents, or to perform, any other specific act, and the party fails to comply within the time specified, the court may direct the act to be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have the effect as if done by the party. * * *

and if the trial Judge may direct the approval of said plan by any other person, there is no reason why the Court could not do it by itself, specially taking into consideration that Branch IV of the Court of First Instance of Manila has supervision over the Land Registration Commissioner and the Director of Lands in matters relating to registered properties, and that these Officers, who are usually entrusted with the duty of approving subdivision plans, have already recommended approval of the subdivision plan in question.

Wherefore, and finding no error in the order appealed from, the same is hereby affirmed, without costs. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Conception, Reyes, J. B. L. and Endencia, JJ., concur.

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