

ALFONSO VERGARA, PETITIONER, VS. ABRAHAM RUGUE, JUDGE JOSE S. DELA CRUZ, CFI, MANILA, BRANCH XIX, THE SHERIFF OF THE CITY OF MANILA, AND THE REGISTER OF DEEDS OF MANILA, RESPOND...*G.R. No. L-32984. August 26, 1977*

Ponente: ANTONIO, J.

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In this petition for "prohibition with mandatory injunction", filed January 4, 1971, petitioner seeks to restrain respondent Judge Jose S. dela Cruz of the Court of First instance of Manila, Branch XIX, the Sheriff of the City of Manila and the Register of Deeds, from enforcing the order of execution of the decision of the Court of Appeals dated June 20, 1967 in CA-G. R. No. 31186-R, entitled "Abraham Rugue vs. Alfonso Vergara, et al."; to declare petitioner Vergara "as the rightful owner of the lot embraced under TCT No. 59274"; and to order respondent Abraham Rugue to pay petitioner P29,000.00 as attorney's fees and moral damages as may be determined by this Court.

On January 7, 1971, the respondents were required to answer the petition and upon petitioner's filing of the cash bond in the amount of P500.00, a writ of prohibitory injunction was issued enjoining respondents, their agents or representatives, from enforcing the order of execution aforementioned until further orders from this Court.

In retrospect, petitioner was one of the defendants in the afore-mentioned case of "Abraham Rugue vs. Alfonso Vergara, et al." which was filed by Rugue with the Court of First Instance of Manila[1] for the annulment of the sale made by the Land Tenure Administration (LTA) of Lot No. 9, Block No. 12 of the Tuason Estate, in favor of Alfonso Vergara and to compel the Chairman-Administrator of the LTA to execute a deed of sale of the same lot in favor of Rugue. The facts of the case, as recited in the decision of the trial court,[2] and the Court of Appeals, are as follows:

"* * * On September 30, 1949, the Kapisanan 'Ang Buhay, Inc.' which was duly authorized by the Tuason Estate in Sta. Mesa, Manila, which has been acquired by the Republic of the Philippines, executed a contract of sale on a portion of the said estate described as Lot No. 9, Block No. 12, in favor of the plaintiff Abraham Rugue. Under the terms of the agreement, plaintiff bound himself to pay and religiously and regularly paid the installments that become due and payable thereon. The size of the lot had been reduced from 200 square meters to only 120 square meters as a result of the widening of the street, reducing the value of the property to only P2,785.59. Of this amount, the sum of P1,407.07 was paid by plaintiff to the Kapisanan 'Ang Buhay, Inc.' and the balance of P1,378.52 was paid to the cashier of the Land Tenure Administration on October 3, 1957.

"Having thus completed the payments constituting the purchase price of the said lot, the Land Tenure Administration became bound to execute the corresponding document of sale to transfer the ownership of the said lot to the plaintiff. However, before the same could be done, one Alfonso Vergara intervened and claim preferential right over the said property over the plaintiff herein. An investigation was conducted by the Land Tenure Administration as a result of which the Land Tenure Administration awarded the contract in favor of

the plaintiff. An appeal from the decision of the Land Tenure Administration was taken by defendant Alfonso Vergara to the Office of the President, which Office reversed the decision of the Land Tenure Administration thru former Executive Secretary Juan Pajo on June 12, 1958, and, subsequently, Natalio Castillo on February 12, 1960, and awarded the contract of the said property to the said defendant Alfonso Vergara, reserving, however, the right of reimbursement to the plaintiff, for the payments that he had made on the said lot by virtue of the contract that was executed between him and the representative of the government. Hence, this action."

After trial, the lower court rendered a decision dismissing the complaint but ordering the Land Tenure Administration to refund to Abraham Rugue all the payments that he has made on they property, as well as to reimburse him for whatever improvement he has made on the property. Upon appeal, the Court of Appeals, on June 20, 1967 reversed the judgment to the trial court, thus:

"WHEREFORE, the appealed decision is hereby reversed; the sale of Lot No. 9, Block No. 12, of the Tuason Estate in Sta. Mesa, Manila, executed by the Land Tenure Administration in favor of defendant Alfonso Vergara, as well as No. 59274 issued in the latter's name for the said lot, is hereby cancelled and declared null and of no effect, and said defendant Alfonso Vergara is hereby ordered to reconvey the said lot to plaintiff-appellant Abraham Rugue with costs of this ins-tance against defendant Alfonso Vergara."

In reversing the trial court, the Appellate Court stated:

"* * * There is something more than meets the eye or jolts one's sense of justice and fair-ness when the lot in question, measuring no more than 125 square meters, after having been sold to, and paid for by, plaintiff Rugue on September 30, 1948, was by the aforequoted letter Exhibit 3-Vergara of defendant Executive Secretary Pajo of June 12, 1958 -- or some ten years later-- awarded to defendant Vergara, who has allegedly a better right to purchase the same than plaintiff Rugue.

"The first thing that we could hardly understand in the appealed decision of the lower Court is the following portion thereof found at page 52 of the Record on Appeal: 'It (meaning plaintiff's complaint) is not an action to reverse, review or in any way pass upon the merits of the decision of the Executive Secretary (referring to said Exhibit 3-Vergara). This is an independent action and must, therefore, be decided on the merits.' Although the parties' recorded pleadings and evidence (especially those of plaintiff) do not say so in so many words, their precise purpose is to inquire into the correctness of the said Exhibit 3-Vergara because it is there that the lot in question was awarded to defendant Vergara by his co-defendant Executive Secretary Pajo, in preference to plaintiff Rugue, hence the latter's present action could have no other purpose than to have the said actuation of defendant Executive Secretary Pajo reviewed and reversed -- contrary to the aforequoted statement of the lower Court. Had the latter reviewed the said Exhibit 3-Vergara, it would have found the assumptions or conclusions reached therein not fully warranted by the facts and circumstances of record and accordingly unfair to plaintiff Rugue and overly partial to defendant Vergara, as will in a moment be shown.

"(1) In the said Exhibit 3-Vergara, it is insinuated that there is no record that plaintiff Rugue paid the back installments for the said lot in the amount of P1,214.80 as follows: 'Thru a letter dated May 3, 1953, Rugue was informed by the Bureau of Lands to pay his back installments amounting to P1,214.80 and to sign a new agreement with the said office to replace his contract with the Ang Buhay, Inc.. The result of this request is not of record.' The insinuation is without basis because it is now admitted on all sides that plaintiff Rugue fully paid for the said lot. As a matter of fact, as already above quoted, the lower Court found that 'Under the terms of the agreement, plaintiff bound himself to pay and religiously and regularly paid the installments that became due and payable thereon.' (Underscoring supplied.) Further, the lower Court said: 'Having thus completed the payments constituting the pur-chase price of said lot, the Land Tenure Administration became bound to execute the corresponding document of sale to transfer the ownership of the said lot to the plaintiff.'

"(2) Another ground in said Exhibit 3-Vergara why the lot in question was awarded to defendant Vergara, in preference to plaintiff Rugue, is that: 'Although Rugue was sold the lot by the Ang Buhay, Inc., presumably

because he was the tenant on record of the lot at the time he purchased the same, he did not satisfy the requirements of a bona fide tenant as defined in LTA Adm. Order No. 2 * * *.' We cannot subscribed to the soundness of this ground. The said Exhibit 3-Vergara admits that: 'The terms and conditions of the sale were embodied in Agreement to Sell (Kasunduan sa Pagbibili) No. 069 executed on September 30, 1948. Rugue bought his rights thereto from Mr. and Mrs. Alipio Caguiat, original lessees of the lot.' If plaintiff Rugue was disqualified from buying the said lot on the alleged ground that he was not a bona fide tenant as defined in LTA Adm. Order No. 2, why was the said sale made to plaintiff at all on September 30, 1948? From the date just mentioned, the validity of the said sale had all along been assumed and never questioned, since 'Thru a letter dated May 3, 1953, Rugue was informed by the Bureau of Lands to pay his back installments amounting to P1,214.80 and to sign a new agreement with the said office to replace his contract with the Ang Buhay, Inc..' and 'On October 1, 1957, the Chairman of the Land Tenure Administration dismissed the claim of both Vergara and Retoma and gave due course to the Agreement to Sell in favor of Abraham Rugue' (Exhibit 3-Vergara). These admitted facts, to our mind, now estop defendants from assailing the validity of the sale of the lot in question to plaintiff Rugue, especially if it is considered that the said sale was for the first time disauthorized by defendant Executive Secretary Pajo in said Exhibit 3-Vergara on June 12, 1958 only – that is, some ten (10) years after plaintiff Rugue had fully paid for the said lot and had all along considered himself the owner thereof. After the said payment, the lapse of the said period of about ten (10) years, and plaintiff Rugue's belief in good faith that he had already acquired ownership of the lot in question – since he has never been charged with any irregularity or bad faith in purchasing the said lot – we cannot in all good conscience now consent that he be deprived thereof by defendant Vergara, who filed his claim to the said lot with the Land Tenure Administration only on November 9, 1956, with full knowledge that it was already sold to plaintiff Rugue.

“(3) Another ground of defendant Executive Secretary Pajo for disauthorizing the sale of the said lot to plaintiff is that 'Rugue does not appear to have materially or physically possessed any portion of the lot in question from the time he purchased the same up to the time Vergara filed his claim thereto' (Exhibit 3-Vergara). This ground, to our mind, is met and overcome by plaintiff Rugue's uncontradicted testimony summarized at page 6 of his brief as follows: 'After the execution of Exhibit 'A' (Kasunduan sa Pagbibili), plaintiff built a fence, barb wire on the land which was two meters deep. It was filled gradually with stones, sand and gravel and a barong-barong was erected thereon, in which plaintiff's encargado lived (t.s.n., pp. 37, 38, 39 and 86, Oct. 3, 1961; t.s.n., p. 7, Nov. 21, 1961). Plaintiff spent P1,500.00 for filling the lot; P300 for the barong-barong; and P250.00 for the fence (t.s.n., p. 56, Oct. 3, 1961). Plaintiff was paying the taxes on the lot (t.s.n., p. 31, Oct. 3, 1961).' This testimony is corroborated by the affidavit of plaintiff's encargado Escolastico Retoma which is found at pages 13-14 of the Record on Appeal, being marked Annex A of plaintiff's complaint. The said acts of possession of plaintiff Rugue, exercised personally and through another on his behalf, certainly took place long before defendant Vergara laid claim to said lot on November 9, 1956. Even from the standpoint of possession, therefore, plaintiff is better entitled to said lot than defendant Vergara.

“(4) Still another reason of defendant Executive Secretary Pajo for disauthorizing the sale of the lot in question in favor of plaintiff Rugue, and awarding the same instead to defendant Vergara is that the former (plaintiff Rugue) 'has no immediate need for it as he now has a house and lot located at Vergara, Quiapo, worth P58,000.00 which he acquired in 1955. He contends he still needs the lot to donate to his landless mother-in-law, who rents a house in Tondo. This is a matter of intent. That he intends to speculate on the lot in question is not too remote a possibility.' (Exhibit 3-Vergara). With respect to this point, plaintiff's explanation at page 7 of his brief is as follows: 'In the year 1953, with plaintiff's saving of around P8,000.00, he was able to buy a house and lot in Quiapo, Manila, for P58,000.00 by borrowing P20,000.00 from the bank, more than P10,000.00 from Manila Times, and the rest from his brother (t.s.n. pp. 77 & 78, Oct. 3, 1961). Three families are living in this house, plaintiff's son who is now married, his brother who loaned the money and plaintiff's family (t.s.n., p. 97, Oct. 3, 1961). Plaintiff still needs the land in question for his married son (t.s.n. p. 97, Oct. 1961).' Assuming that in 1953 or 1958 plaintiff Rugue acquired this house and lot in Quiapo for P58,000.00, this does not operate as a forfeiture of his right to the lot in question which he brought as far back as September

16, 1948, or some seven to nine years before. For one thing, the acquisition of the Quiapo property does not show affluence on plaintiff's part since most of the amount he used therefor was only borrowed by him. For another, a purchaser of a lot from the Tuason Estate, like herein plaintiff, cannot be prohibited from or penalized for acquiring other properties or improving his lot in the future, especially if he is a family man, otherwise there would be an illegal curtailment of legitimate enterprise, initiative and ambition. The undisputed fact is that when plaintiff acquired the said lot on September 16, 1948, he was poor and landless and therefore qualified to make the said purchase, so much so that the said sale was duly made in his favor and even the Land Tenure Administration recognized the validity thereof until some ten years later when it was disauthorized by defendant Executive Secretary Pajo for the dubious reasons stated in Exhibit 3-Vergara.

"(5) In the same Exhibit 3-Vergara, it is also stated that 'He (plaintiff Rugue) failed to construct a house thereon in violation of the terms of the Agreement to Sell (Sec. 11, Exh. B).' An examination of the said Section 11 discloses that plaintiff has a period of ten (10) years from the purchase of the said lot within which to construct a house thereon for himself or his family. It will be noted, however, that before the expiration of the said period, defendant Vergara filed his claim to the said lot, hence plaintiff could not be blamed for not constructing the said house while the said claim has not been acted upon, as it was in fact favorably acted upon only on June 12, 1958. But the undisputed fact again is that, as testified to by plaintiff, he had introduced improvements upon the said lot consisting of a fence, barbed wire, fillings of stone, sand and gravel and a barong-barong in which his encargado Escolastico Retoma lived, for all of which he spent no less than P2,000.00.

"(6) The only reason given by defendant Executive Secretary Pajo in awarding the said lot to defendant Vergara, which was concurred in by the lower Court in its decision, is that 'Vergara has shown that he is landless, and a resident of the same estate since birth.' (Exhibit 3-Vergara) Note that Vergara is allegedly a resident of the said Tuason Estate since birth – not a bona fide occupant of the lot in question. If this statement in Exhibit 3-Vergara and in the appealed decision is true, then why did said defendant Vergara not apply for another unoccupied lot among the many lots in that extensive estate, instead of picking on the preserve of another, namely, the lot in question which he knew to be already claimed by and sold to plaintiff Rugue since September 16, 1948, and occupied for and on behalf of the latter by Escolastico Retoma? The only answer to this question could only mean that said defendant Vergara has not acted in good faith in filing his said claim to the lot in question on November 9, 1956, that is, some seven or eight years after the said lot was sold to herein plaintiff.

"The appealed decision being entirely based on the said letter Exhibit 3-Vergara of defendant Executive Secretary Pajo, and as we find the grounds relied upon in the said exhibit to be insufficient to overthrow the rights which plaintiff has acquired over the lot in question, we are fully and strongly of the persuasion that plaintiff's appeal from the said decision should be sustained."

On December 23, 1967, the records of the case were remanded by the Court of Appeals to the lower court, and on December 18, 1969, Rugue filed with the lower court a motion for execution of said decision which was granted by the trial court on January 10, 1970. Consequently, the corresponding order of execution was issued.[3]

On January 20, 1970, petitioner Vergara was served with a copy of said order of execution. On April 20, 1970, through his new counsel, Vergara filed with the Court of Appeals a petition for re-lief from judgment; he also filed with the lower court the corresponding motion to stay execution of judgment. In his petition for relief from judgment, Vergara alleged, among others, that he learned from his former counsel, Atty. Matias P. Gaspar, that the latter never received a copy of the decision of the Court of Appeals, and that on his part, he learned of said decision only when he received notice of the execution proceedings in the lower court. He, however, stated in his petition that "it appears from the records of the Court of Appeals that Atty. Gaspar has not given notice of his various changes of address." He then prayed that he be relieved from the "mistakes of counsel" on the following grounds:

“(a) This case involves the award of land to the landless. The strict application of the rule refusing relief for mistakes of counsel and imputing said mistakes of counsel to the parties litigants will defeat the primordial government policy of extending relief to the landless.

“(b) The apparent negligence of Atty. Gaspar is not entirely without suspicion that it was not procured by appellant Rugue. The records show that appellant Rugue inexplicably delayed by more than two years his filing of a motion for execution of the judgment (as previously shown) – a delay obviously motivated by the scheme to prevent appellee from being able to seasonably petition for relief.”

Per Resolution dated June 5, 1970, the Court of Appeals denied Vergara's petition for relief from judgment. Copy of this resolution of denial was received by petitioner on June 11, 1970. He moved for reconsideration of said Resolution on June 24, 1970, but the motion was likewise denied, per Resolution dated July 8, 1970. Forthwith, Vergara, together with his co-defendants in CA-G. R. No. 31186-R, filed with this Court, on July 30, 1970, a petition for review by certiorari of the decision and resolutions of the Court of Appeals, with preliminary injunction, docketed as G. R. No. L-32309. In the petition for review, Vergara, after reciting as the facts of the case the afore-quoted findings of fact of the trial court, presented as reasons for the allowance of the petition the following: (1) Rugue did not acquire any legal right under the "Kasunduan sa Pagbibili" which was executed by and between Rugue and the Kapisanang "Ang Buhay, Inc.", by reason of Rugue's failure to construct a house on said lot and personally live therein pursuant to paragraph 11 of the Agreement; (2) the decision of the Chairman-Administrator of the Land Tenure Administration on October 1, 1957, sustaining the validity of the agreement to sell to Rugue, was not final. On appeal by Vergara, the Office of the President, through former Executive Secretary Juan Pajo, on June 12, 1958, and subsequently, Executive Secretary Natalio Castillo, on February 12, 1960, reversed the decision of the Land Tenure Administration and awarded "the contract of the property to petitioner Vergara * * *", which decision is thus the final administrative decision of the controversy; (3) Vergara was qualified to acquire the lot in question while Rugue did not have the qualification of a bona fide tenant; and (4) there was no ground for annulling the contract of sale to Vergara. Supplemental reasons were also presented, all to the effect that in rendering the questioned decision, the Court of Appeals failed to consider the overriding policy of the Government in acquiring the Tuason Estate, which was to give assistance to the landless, and that the sale to Rugue contravened said policy. Vergara insisted that the Executive Secretary did not Abuse his discretion in awarding the lot to him in preference to Rugue.

This Court denied the petition for review by certiorari per Resolution dated August 18, 1970, stating, that "upon consideration of the allegations in the Petition and the Supplemental Reasons for Allowance of Petition for Certiorari in G. R. No. L-32309, Alfonso Vergara, et al. vs. Court of Appeals, et al., the Court resolved to DENY the Petition, there being no showing that the Court of Appeals erred in denying petitioner Vergara's petition for relief filed therewith." On September 24, 1970, Vergara moved for reconsideration of the Resolution, contending that Rugue was disqualified to purchase the lot, and that the subsequent award to him was valid, he being qualified to acquire the property. This motion was denied on September 29, 1970. Undaunted, he filed a second motion for reconsideration on October 13, 1970, on the grounds that: (a) the contract of sale to Rugue was null and void because of absence of written consent of the Rural Progress Administration; (b) the Court of Appeals erred in its findings of material facts; and (c) there was no ground to annul the sale to Vergara. This was likewise denied on October 20, 1970 for having been filed late, as entry of judgment had been made earlier on October 8, 1970. This notwithstanding, Vergara filed a third motion for reconsideration on November 14, 1970. Resolving this third motion, this Court, per Resolution dated December 10, 1970, said:

"Upon consideration of the third motion for reconsideration of the petitioner in G.R. No. L-32309, Alfonso Vergara, et al. vs. Court of Appeals, et al., the Court resolved to DENY the same, the decision in this case having been final already even before petitioner's second motion for reconsideration was filed and, in any

event, on the basis of the facts found by the Court of Appeals which this Court cannot review, the decision of said court appears to be in accordance with law. * * *

Apprehensive that the lower court, upon receipt of the foregoing Resolution, would lift its order staying execution of the decision of the Court of Appeals in CA-G. R. No. 31186-R, petitioner filed the present petition, contending that said decision of the Court of Appeals "was rendered through a patent grave abuse of discretion amounting to want of jurisdiction or excess of jurisdiction" and, consequently, the decision is null and void and its execution can be restrained by the extraordinary writ of prohibition.

In his Memorandum, petitioner points out the instances wherein he believes the Court of Appeals committed grave abuse of discretion or exceeded its jurisdiction, to wit: (1) when "it attacked collaterally" the decision dated June 12, 1958 of the Office of the President, thru Executive Secretary Pajo, the correctness of which was not the sole issue raised before the Court of First instance of Manila in the civil action for annulment of sale, specific performance and writ of preliminary injunction (Civil Case No. 45780, Abraham Rugue vs. Alfonso Vergara, et al.), after the said decision of Executive Secretary Pajo has long become final and executory; (2) when it rendered a decision based on "mis-restated facts" contrary to the facts of the case on record; (3) when it "honored" the sale of the questioned Lot No. 9, Block No. 12 of the Tuason Estate, Sta. Mesa, Manila, under the deed of conditional sale (Kasunduan sa Paghibili) executed between the "Ang Buhay, Inc." and Abraham Rugue, which is void from its inception; and (4) when it rendered a decision "contrary to the issues raised on appeal."

I

The function of prohibition is to prevent the unlawful and oppressive exercise of legal authority and to provide for a fair and orderly administration of justice.[4] It is directed against proceedings that are done without or in excess of jurisdiction, or with grave abuse of discretion, there being no appeal or other plain, speedy and adequate remedy in the ordinary course of law.[5] For grave abuse of discretion to prosper as a ground for prohibition, it must first be demonstrated that the lower court has exercised its power in an arbitrary or despotic manner, by reason of passion or personal hostility, and it must be so patent and gross as would amount to an evasion, or to a virtual refusal to perform the duty enjoined or to act in contemplation of law.[6] On the other hand, the term "excess of jurisdiction" signifies that the court, board, or officer has jurisdiction over a case but has transcended the same or acted without any authority.[7]

With the foregoing criteria in mind, We shall now examine the instances indicated by the petitioner to support his claim that the Court of Appeals had acted with grave abuse of discretion or in excess of its jurisdiction.

It is petitioner's view that when the Court of Appeals in effect set aside the effects of the decision of Executive Secretary Pajo, dated June 12, 1958, which according to him had long become final and executory, it exceeded or transcended its appellate jurisdiction. The thrust of his argument is that the Court of Appeals was precluded from reviewing the decision of Executive Secretary Pajo on the ground of *res judicata* – a principle also applicable to judicial acts of public, executive or administrative officers and boards.

II

We do not think that this ingenious argument is legally tenable. It ignores the circumstance that *res judicata* was never raised as a defense by the petitioner in the afore-mentioned Civil Case No. 45780, the decision of which was reversed by the Appellate Court in CA-G. R. No. 31186-R. It should be remembered that in the Answer of petitioner Alfonso Vergara, dated January 5, 1961, to the complaint of Abraham Rugue for annulment of sale and specific performance in Civil Case No. 45780, his defense was that the resolutions of the Executive Secretary, dated June 12, 1958 and February 12, 1960, (1) reversing the decision of the Land Tenure Administration in LTA

Case No. 253 dismissing the claims, of Vergara and Retold over Lot No. 9, Block No. 12 of the Tuason Estate and (2) awarding the said property to him, "is based on law and equity" because (a) Rugue was not a bona fide tenant as defined in LTA Administrative Order No. 2; (b) Rugue has no immediate need of the land in question as he acquired another house and lot at Vergara Street, Quiapo, Manila; (c) "to convey to plaintiff the lot in question would be repugnant to the spirit of the Land Reform Act 'to distribute as many family size farms to as many landless citizens as possible'; and (d) "plaintiff failed to comply with the terms of the agreement to sell executed between him and the Kapisanang 'Ang Buhay, Inc.'" as he failed to construct a house on said property. Nowhere in the afore-mentioned answer has Vergara ever asserted that the decisions of Executive Secretary Pajo, as affirmed by Executive Secretary Castillo, was a final adjudication of the property rights of Vergara and Rugue and, therefore, the action of Rugue was barred under the doctrine of res judicata. Neither has Vergara invoked res judicata in his brief when the case was appealed to the Court of Appeals in CA-G. R. No. 31186-R, although extensive discussion was made thereon regarding the power of the Executive Secretary to reverse the decision of the Chairman of the Land Tenure Administration and the correctness and validity of the former's decision reversing that of the latter. Nor has he questioned, in his petition for certiorari with this Court on July 30, 1970 in G. R. No. L-32309, the jurisdiction of the Court of Appeals in reversing the trial court's judgment. As a matter of fact, the substance of his petition was that the Executive Secretary did not abuse his discretion in awarding the lot to Vergara in preference to Rugue who "(a) had no new contract with the Government as he was not a member of Ang Buhay, Inc.; (b) had no previous consent of the Rural Progress Administration to buy; (c) had never occupied the lot in question for more than 10 years by then * * *; (d) had instead bought himself another house in Quiapo for P58,000.00." Thus, he emphasized therein not the lack of authority of the respondent Court of Appeals to cancel and declare null and of no effect the sale of Lot No. 9, Block No. 12, of the Tuason Estate in Sta. Mesa, Manila, executed by the Land Tenure Administration in favor of Alfonso Vergara, as well as Transfer Certificate of Title No. 59274 issued in Vergara's name, but the fact that the Appellate Court "has so far departed from the accepted and usual course of judicial proceedings". This was predicated on his argument that: (1) Rugue did not acquire any legal right over the "Kasunduan sa Pagbibili" with Ang Buhay, Inc. because of his failure to physically possess said lot and to construct a house therein as required by paragraph 11 of the agreement; (2) the decision of the Chairman-Administrator of the Land Tenure Administration on October 1, 1957 denying the claim of Vergara and Retoma and sustaining the validity of the sale to Rugue was not final as it was reversed by the Executive Secretary; (3) Vergara was qualified to acquire said land in question; and (4) there is no ground for annulling the contract of sale to Vergara. Even in the "Supplemental Reasons for Allowance of Petition for Certiorari" filed by Vergara with this Court on August 14, 1970 in G. R. No. L-32309, said party never raised in issue the alleged lack or excess of jurisdiction of the Appellate Court in rendering the afore-mentioned judgment.

It is rather too late in the day for petitioner to question now the lack or excess of jurisdiction of the Appellate Court in rendering the said decision on the alleged ground that said Court is precluded from reversing the award of the lot on, the ground of res judicata. It should be obvious to petitioner that the defense of res judicata when not interposed either in a motion to dismiss or in an answer is deemed waived.[8] Such waiver is rendered more evident by the fact that in Civil Case No. 45780 for annulment of sale and specific performance, the Executive Secretary was not only made a party-defendant but the validity of the decisions of Executive Secretaries Pajo and Castillo, dated June 12, 1958 and February 12, 1960, were squarely placed in issue as having been rendered "without legal or equitable justification whatsoever". Furthermore, the decision of Executive Secretary Pajo was presented as evidence by petitioner Vergara himself (Exhibit 3-Vergara). Considering such circumstance and the fact that petitioner Vergara had not invoked the defense of res judicata, it was properly within the appellate authority Of the Court of Appeals to pass upon said decision of the Executive Secretary to ascertain whether or not the same was supported by substantial evidence,[9] or that said administrative officer acted with gross abuse of discretion, fraud or error of law.[10]

III

Obviously, the present petition seeks to litigate anew the questions of both fact and law raised by the parties in the Court of First Instance of Manila and in the Court of Appeals, and finally resolved by this Court as explained above.

Petitioner cannot relitigate the aforesaid issues. The doctrine of *res judicata* has already set in because of the finality not only of the decision of the Court of Appeals, the execution of which is being sought here to be prohibited, but also of the resolution of this Court in G. R. No. L-32309, afore-mentioned, sustaining said decision of the Court of Appeals.

The doctrine of *res judicata* has two (2) aspects. The first is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. The second aspect is that it precludes the relitigation of a particular fact or issue in another action between the same parties on a different claim or cause of action.[11]

The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in a former action is commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions "necessarily involved in an issue, and necessarily adjudicated, or necessarily implied in the final judgment, although no specific finding may have been made in reference thereto, and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties, and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself. Reasons for the rule are that a judgment is an adjudication on all the matters which are essential to support it, and that every proposition assumed or decided by the court leading up to the final conclusion and upon which such conclusion is based is as effectually passed upon as the ultimate question which is finally solved." [12]

Explaining this aspect of *res judicata*, this Court in *Kidpalos v. Baguio Gold Mining Co.*, [13] said:

"* * * issues once previously threshed out and finally adjudicated should no longer be relitigated between the same parties on the same subject matter and cause of action. This is the substance of *res judicata*, without which multiplicity of actions will be unavoidable. Hence the doctrine is that –

'Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties, and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself.' (30 Am. Jur. 930)

"Or, as stated in *Redden vs. Metzger*, 26 Am. St. Rep. 97, 99-100:

"* * *. The rule of *res adjudicata* applies as, well to facts set-tled and adjudicated as to causes of action: *Whitaker v. Hawley*, 30 Kan. 326. The judgment of a court of competent jurisdiction is conclusive on the parties as to all points directly involved in it and necessarily determined: *Shirland v. Union Nat. Bank*, 65 Iowa 96; *Freeman on Judgments*, sec. 249.

'When a fact has been once determined in the course of a judicial proceeding, and a final judgment has been rendered in accordance therewith, it cannot be again litigated between the same parties without virtually impeaching the correctness of the former decision, which, from motives of public policy, the law does not permit to be done. The estoppel is not confined to the judgment, but extend to all facts involved in it as necessary steps, or the groundwork upon which it must have been founded. It is allowable to reason back from a judgment to the

basis on which it stands, upon the obvious principle that where a conclusion is indisputable, and could have been drawn only from certain premises, the premises are equally indisputable with the conclusion: *Burlen v. Shannon*, 99 Mass. 200; 96 Am. Dec. 733; *Board, etc. v. Mineral Point R. R. Co.*, 24 Vis. 124; *Freeman on Judgments*, sec. 257; *Wells on Res Adjudicata*, sec. 226; 1 *Herman on Estoppel*, sec. 111.'" (Italics supplied.)

It is urged by petitioner that the facts of the case as stated in the questioned decision of the Court Of Appeals are "mis-restated" in that there are some portions thereof which do not reflect the true facts. Again, it is rather too late for the petitioner to raise this point. In fact, having adopted the very same facts, as stated by the Court of Appeals in its decision, in his petition for certiorari with this Court in G. R. No. L-32309, he is now estopped from raising such question. In any event, no excess or want of jurisdiction is herein involved which would justify the availment of the extraordinary legal remedy of prohibition.

The same conclusion is reached with regard to petitioner's contention that the Court of Appeals erred when it honored the sale of the questioned lot in favor of Abraham Rugue. This is a Matter that has to do with the merits of the case which petitioner is now precluded from relitigating in view of the principle of *res judicata*. Certainly, such question is not a proper subject of a petition for prohibition.

The office of the extraordinary remedy of prohibition is not to correct errors of judgment but to prevent or restrain usurpation by inferior tribunals and to compel them to observe the limitation of their jurisdictions.[14] It is a preventive remedy. Its function is to restrain the doing of some act to be done. It is not intended to provide a remedy for acts already accomplished.[15] This remedy will lie only to "prevent an encroachment, excess, usurpation, or improper assumption of jurisdiction on the part of an inferior court or tribunal, or to prevent some great outrage upon the settled principles of law and procedure; but, if the inferior court or tribunal has jurisdiction of the person and subject-matter of the controversy, the writ will not lie to correct errors and irregularities in procedure, or to prevent an erroneous decision or an enforcement of an erroneous judgment, or even in cases of encroachment, usurpation, and abuse of judicial power or the improper assumption or jurisdiction, where an adequate and applicable remedy by appeal, writ of error, certiorari, or other prescribed methods of review are available." [16] It may be safely asserted as a settled law, that "unless the court sought to be prohibited is wanting in jurisdiction over the class of cases to which the pending case belongs or is attempting to act in excess of its jurisdiction in a case of which it rightfully has cognizance, the writ will be denied." [17]

WHEREFORE, in view of the foregoing, the petition for prohibition should be, and it is hereby, DISMISSED. Costs against the petitioner.

Fernando, (Chairman), Barredo, Aquino, Concepcion, Jr., and Santos, JJ., concur.

[1] Civil Case No. 45780, entitled "Abraham Rugue versus Alfonso Vergara, Manuel Castañeda as Chairman-Administrator, Land Tenure Administration, Natalio Castillo, Executive Secretary, Wenceslao Cornejo, Judge Branch V, Municipal Court, Manila."

[2] Adopted by the Court of Appeals in its decision, dated June 20, 1967, in CA-G. R. No. 31186-R.

[3] This order is the subject of the present petition. Petitioner seeks to restrain its enforcement.

[4] *Magallanes v. Sarita*, 18 SCRA 575; *Lopez v. Paras*, 18 SCRA 616; *Navarro v. Lardizabal*, 25 SCRA 370.

[5] *Commissioner of Immigration v. Go Tieng*, 28 SCRA 237.

[6] *Solidum v. Hernandez*, 7 SCRA 320; *Apurillo v. Garciano*, 28 SCRA 1054.

[7] *Solidum v. Hernandez*, *supra*.

[8] *Philippine Coal Miner's Union v. CEPOC*, 10 SCRA 784; Sec. 2, Rule 9, Revised Rules of Court.

[9] *Ang Tibay v. C.I.R.*, 69 Phil. 635.

[10] *Lovina v. Moreno*, 9 SCRA 557.

[11] "* * * Private right and public welfare unite in demanding that a question once adjudicated by a court of competent jurisdiction shall, except in direct proceedings to review; be considered as finally settled and conclusive upon the parties. Interest reipublicoe ut sit finis litium. But in order to make this finality rightful it should appear that the question was distinctly put in issue; that the parties presented their evidence, or at least had an opportunity to present it, and that the question was decided. Cases of an alleged prior adjudication have frequently been presented in this court and the scope of a plea thereof fully determined. In the leading case of *Cromwell v. Sac County*, 94 U. S. 351, 352, 24 L. ed. 195, 197, we said:

'In considering the operation of this judgment, it should be borne in mind, as stated by counsel, that there is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. Thus, for example, a judgment rendered upon a promissory note is conclusive as to the validity of the instrument and the amount due upon it, although it be subsequently alleged that perfect defenses actually existed, of which no proof was offered, such as forgery, want of consideration, or payment. If such defenses were not presented in the action, and established by competent evidence, the subsequent allegation of their existence is of no legal consequence. The judgment is as conclusive, so far as future proceedings at law are concerned, as though the defenses never existed. The language, therefore, which is so often used, that a judgment estops not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented, is strictly accurate, when applied to the demand or claim in controversy. Such demand or claim, having passed into judgment, cannot again be brought into litigation between the parties in proceedings at law upon any ground whatever.'" (*Fayerwather v. Ritch*, 195 U.S. 276, 49 L. ed. 210, 211.)

[12] *Santiago Lopez, et al. v. Hon. Manases G. Reyes, etc., et al.*, G. R. No. L-29498, March 31, 1977.

[13] 14 SCRA 913, 917-918. *Santiago Lopez, et al. v. Hon. Manases G. Reyes, etc., et al.*, *supra*.

[14] *Heinsch, et al. v. Kirby, et al.*, 24 N.W. 2d 493, 494.

[15] *Cabañero v. Torres*, 61 Phil. 522; *Agustin v. de la Fuente*, 84 Phil. 515.

[16] *Ex Parte Jones*, 77 A.L.R. 235, 239.

[17] *State v. Tracy*, 140 SW 888.

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