

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), PETITIONER, VS. THE HONORABLE COURT OF APPEALS, FELIPE T. ANG AND EUFROCINA C. TOBY, RESPONDENTS.

G.R. No. L-41811. November 10, 1986

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the decision of the Court of Appeals promulgated on December 18, 1975 which set aside the writ of possession issued to petitioner GSIS in L.R.C. (G.L.R.O.) Record Numbers 219 and 108 of the former Court of First Instance (CFI) of Manila, Branch IV, entitled "GSIS v. Sps. Felipe T. Ang and Eufrocina C. Toby"

The records disclose that from 1958 to 1971 private respondents Ang obtained from petitioner GSIS several loans needed to construct a four-storey hotel on their property at Ongpin Street, Manila. The loans were secured by real estate mortgages constituted over five parcels of land registered in the names of the spouses Ang in T.C.T. Nos. 46960, 502.33, 71966 and 71969 of the Register of Deeds of Manila. All told, by 1971 the spouses Ang had an outstanding loan of P12,544,201 from the GSIS.

Upon the private respondents' failure to pay their loan on time, the GSIS foreclosed on their property extra-judicially. At an auction sale held on March 21, 1974 petitioner GSIS, as highest bidder, purchased the property for NINETEEN MILLION SIX HUNDRED NINETY-FIVE THOUSAND THREE HUNDRED SIXTY-NINE PESOS (P19,695,369). Seeking to obtain possession of the property it bought at the foreclosure sale, petitioner GSIS filed a petition for the issuance of a writ of possession pursuant to the provisions of Section 7 of Act 3135, as amended. As already stated, the petition was filed in G.L.R.O. Record Nos. 219 and 108, of the then CFI of Manila, Branch IV, presided over by Judge Serafin R. Cuevas, later to become a member of this Court.

After exchanges of several pleadings between the parties, Judge Serafin R. Cuevas granted the petition for the issuance of the writ of possession. In his Order dated October 1, 1974 he ruled —

"Petitioner's entitlement to the relief prayed for could hardly be controverted. And this is specifically provided for under Sec. 7 of Act 3135, which reads as follows:

'SEC. 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex-parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the

clerk of court shall, upon the filing of such petition collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four Hundred and Ninety-Six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.'

"Under the aforequoted provision, possession of the purchased property may be given to the purchaser during the redemption period upon the latter's filing an ex parte motion and furnishing a bond in the amount equivalent to the use of the property for a period of twelve months to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act." (*Italics supplied*) (Rollo, pp. 23-24)

Having failed in their various attempts to have the aforestated Order reconsidered, private respondents sought the annulment of said Order in the Court of Appeals thru a petition for certiorari and prohibition with preliminary injunction, docketed as CA- G.R. No. 04354. Thru resolutions dated July 7 and 30, 1975 the respondent court issued a restraining order and a writ of preliminary injunction, respectively. The first, to enjoin Judge Serafin R. Cuevas from taking further action in G.L.R.O. Record Nos. 219 and 108, and the second, to restrain him from enforcing his Order dated October 1, 1974. The GSIS came to this Court on a petition for certiorari and prohibition with writ of preliminary injunction dated November 4, 1975. While the petition was pending in this Court, the Court of Appeals rendered a decision in CA-G.R. No. 04354 dated December 18, 1975 which annulled and set aside the October 1, 1974 Order of Judge Serafin R. Cuevas. The writ of preliminary injunction issued in that case was made permanent. In view of that decision of the respondent Court of Appeals, petitioner GSIS filed in this Court a supplemental petition dated January 12, 1976 raising the issue of whether it is entitled, during the period of redemption, to the possession of the property it purchased at the foreclosure sale made under the provisions of Act 3135.

This issue is hardly of first impression. We had occasion to rule on it in *Marcelo Steel Corp. v. Court of Appeals*, 54 SCRA 89, citing *De Gracia v. San Jose*, 94 Phil. 623, where this Court said:

"As may be seen, the law expressly authorizes the purchaser to petition for a writ of possession during the redemption period by filing an ex parte motion under oath for that purpose in the corresponding registration or cadastral proceeding in the case of property with Torrens title, and upon the filing of such motion and the approval of corresponding bond, the law also in express terms directs the court to issue the order for a writ of possession. Under the legal provisions above copied, the order for a writ of possession issues as a matter of course upon the filing of the proper motion and the approval of the corresponding bond. No discretion is left to the court. And any question regarding the regularity and validity of the sale (and the consequent cancellation of the writ) is left to be determined in a subsequent proceeding as outlined in Section 8. Such question is not to be raised as a justification for opposing the issuance of the writ of possession since, under the Act, the proceeding for this is ex parte."

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 case of *JFC Service Leasing and Acceptance Corp. v. Nera*, 19 SCRA 181, 185, We ruled:

"Moreover, if under Section 7 of Act 3135 the court has the power, on the ex parte application of the purchaser, to issue a writ of possession during the period of redemption, there is no reason why it should not also have the same power after the expiration of that period, especially where, as in this case, a new title has already been issued in the name of the purchaser."

WHEREFORE, the decision appealed from is hereby REVERSED, and the writ of possession issued pursuant to

the Order dated October 1, 1974 of the then CFI of Manila, Branch IV, is hereby REINSTATED without pronouncement as to costs.

SO ORDERED.

Feria (Chairman), Fernan, Alampay, and Gutierrez, Jr., JJ., concur.

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