

PRODUCERS SAVINGS BANK CORPORATION, PETITIONER, VS. THE CLERK OF COURT AND THE HONORABLE EXECUTIVE JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 40, PALAYAN CITY, NUEVA ECIJA, RESPO...

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a petition filed under Rule 65 of the Rules of Court, as amended, praying for issuance of a writ of mandamus to direct public respondents Clerk of Court and Executive Judge of the Regional Trial Court (RTC) of Palayan City, Nueva Ecija, Branch 40, to proceed with the conduct of foreclosure proceedings and auction sale of the parcels of land covered by Transfer Certificate of Title Nos. E.P. 52558 (Emancipation Patent No. 384749) and E.P. 69492 (Emancipation Patent No. 384751) both in the name Alberto J. Gante in Case No. 0303-P-14.

An initial evaluation of the petition shows the following procedural infirmities: 1) Petitioner failed to serve copies of the petition to respondents Clerk of Court and the Executive Judge of Branch 40, RTC of Palayan City as required under Par. 3, Sec. 3, Rule 46 in relation to Rule 65 of the Rules;^[1] 2) Atty. Gerardo S. De Leon, who notarized the attached verification and certification of non-forum shopping and affidavit of service failed to state his Commission No., Place of Commission, MCLE Compliance IV and the date of issuance thereof, as required under Sec. 2 (b) and (c), Rule VIII of the 2004 Rules on Notarial Practice;^[2] and 3) The Case Division of this Court reported that petitioner's payment of the required docket and other legal fees is short by P430.00.^[3] The foregoing procedural infirmities provide sufficient ground for dismissal of the petition under Sec. 3 of Rule 46 of the Rules.

Further, this Court reviewed the record and the allegations interposed by petitioner, and finds the petition devoid of merit.

The antecedent facts show that on January 9, 2014, petitioner filed a petition for extra-judicial foreclosure of two (2) parcels of land covered by TCT No. E.P. 52558 (EP No. 384749) and TCT No. E.P. 69492 (EP No. 384751) issued to Alberto J. Gante on December 6, 1989 under Presidential Decree No. 27 or the Agrarian Reform Program dated October 21, 1972.^[4] Apparently, Alberto Gante together with his wife Rufina and Spouses Ernesto Gante and Miguela Gante obtained a loan of P80,000.00 with petitioner on January 17, 2000 and used the subject properties as security for the loan by executing a real estate mortgage in favor of the latter.^[5] On March 20, 2014, the RTC of Palayan City issued the order which reads:

“xxx It is stated, however, in the face of the above-mentioned titles, paragraph 4, that:

“xxx it shall not be transferred except by hereditary succession or to the Government in accordance with the provisions of Presidential Decree No. 27, Code of Agrarian Reforms of the Philippines and other existing laws and regulations xxx” (Emphasis supplied).

In view of the express provision written on the face of Transfer Certificate of Title Nos. E.P. 69492 and E.P. 52558, disabling the transfer of said properties by any mode except by hereditary succession, the petition is

DENIED.

Accordingly, public auction of the properties covered by Transfer Certificate of Title Nos. E.P. 69492 and E.P. 52558 scheduled on March 21, 2014 or in the alternative, on March 28, 2014 are hereby CANCELLED.

SO ORDERED.[6]

Petitioner moved for reconsideration of the said order on April 4, 2014, however, the RTC of Palayan City issued the order dated December 3, 2014 dismissing the case.[7] Hence, petitioner filed this petition for mandamus.

Mandamus shall issue when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law.[8] It is proper when the act against which it is directed is one addressed to the discretion of the tribunal or officer. In matters involving the exercise of judgment and discretion, mandamus may only be resorted to in order to compel respondent tribunal, corporation, board, officer or person to take action, but it cannot be used to direct the manner or the particular way discretion is to be exercised, or to compel the retraction or reversal of an action already taken in the exercise of judgment or discretion.[9] As an extraordinary remedy, it is only issued where the usual and ordinary modes of proceeding and forms of remedy are powerless to afford redress to a party aggrieved, and where without its aid there would be a failure of justice. The writ of mandamus is set apart from other remedial writs, considering that it is used merely to compel action and to coerce the performance of a pre-existing duty. In fact, a doctrine well-embedded in our jurisprudence is that mandamus will issue only when the petitioner has a clear legal right to the performance of the act sought to be compelled and the respondent has an imperative duty to perform the same. As such, the petitioner bears the burden to show that there is such a clear legal right to the performance of the act, and a corresponding compelling duty on the part of the respondent to perform the act.[10]

A key principle to be observed in dealing with petitions for mandamus is that such extraordinary remedy lies to compel the performance of duties that are purely ministerial in nature, or one that an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of its own judgment upon the propriety or impropriety of the act done. A duty is ministerial only when its discharge requires neither the exercise of official discretion or judgment.[11] In this case, petitioner's disregard of the foregoing fundamental requisites for mandamus rendered its petition untenable and devoid of merit. Foremost, mandamus is a remedy only when there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law. Second, the RTC cannot be compelled by way of a writ of mandamus to proceed with foreclosure proceeding considering that in matters involving the exercise of judgment and discretion, mandamus cannot be used to direct the manner or the particular way the judgment and discretion are to be exercised.

Even assuming arguendo that petitioner availed itself of the correct remedy under the Rules, the petition would nevertheless be dismissed. As borne by the record, Alberto Gante, as a holder of emancipation patents, is bound by the proscription against transfers of land awards to third persons, which is prohibited by law. Par. 13 of Presidential Decree No. 27 provides:

“Title to land acquired pursuant to this Decree or the Land Reform Program of the Government shall not be transferable except by hereditary succession or to the Government in accordance with the provisions of this Decree, the Code of Agrarian Reform and other existing laws and regulations.”[12]

This prohibition has been carried over to Sec. 27 of Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988, which provides:

“Section 27. Transferability of Awarded Lands. – Lands acquired by beneficiaries under this Act may not be sold, transferred or conveyed except through hereditary succession, or to the government, or to the LBP (Land Bank of the Philippines), or to other qualified beneficiaries for a period of ten (10) years: Provided, however, That the children or the spouse of the transferor, shall have a right to repurchase the land from the Government or LBP within a period of two (2) years. x x x”

In *Rural Bank of Dasmarinas, Inc. vs. Nestor Jarin, et al.*,^[13] it was held that respondents’ farm lots subject of the mortgages are not subject to foreclosure, except by the Land Bank, because foreclosure contemplates the transfer of ownership over the mortgaged lands. In that case, petitioner bank invoked Sec. 1 of P.D. No. 315 amending P.D. No. 27, which authorizes all financing institutions to accept as collateral for loans any duly registered land transfer certificate issued by the Government through the Department of Agrarian Reform to tenant-farmers, provided that the loans obtained shall be used in the improvement or development of the farmholding of the tenant-farmer or the establishment of facilities that will enhance production or marketing of agricultural products or increase farm income therefrom. Petitioner bank argued that the mere fact that a farmer-beneficiary is allowed by the Government to offer his landholdings as collateral to the financial institutions shows the Government’s intent to include foreclosure of creditor-banks as one of the modes for transferring titles to land acquired pursuant to P.D. No. 27. The Supreme Court found the argument untenable and upheld the prohibition under P.D. No. 27. It held that in order to insure his continued possession and enjoyment of the property, a farmer-beneficiary could not, under the law, make any valid form of transfer except to the government or by hereditary succession, to his successors. The prohibition against transfers to persons other than the heirs of other qualified beneficiaries stems from the policy of the Government to develop generations of farmers to attain its avowed goal to have an adequate and sustained agricultural production.^[14]

WHEREFORE, the petition for mandamus is DISMISSED.

SO ORDERED.

Tijam, N. G., Chairperson, and [*]Peralta, Jr., E. B., JJ., concur.

[*] Vice J. Ramon A. Cruz, per Office Order No. 97-15-ABR dtd. 30 March 2015.

[1] Rollo, p. 15.

[2] Sec. 2, Rule VIII of A.M. No. 02-8-13-SC entitled “2004 Rules on Notarial Practice,” provides:

xxx

SEC. 2. Contents of the Concluding Part of the Notarial Certificate. – The notarial certificate shall include the following:

- (a) the name of the notary public as exactly indicated in the commission;
- (b) the serial number of the commission of the notary public;
- (c) the words "Notary Public" and the province or city where the notary public is commissioned, the expiration date of the commission, the office address of the notary public; and
- (d) the roll of attorney's number, the professional tax receipt number and the place and date of issuance thereof, and the IBP membership number.

[3] Rollo, p. 56.

[4] Rollo, pp. 22-29.

[5] Id. at pp. 38-39.

[6] Id. at p. 30.

[7] Id. at pp. 31-34; and p. 35.

[8] Sec. 3, Rule 65 of the Rules of Court, as amended.

[9] Ampatuan vs. Sec. Leila De Lima, as Secretary of the Department of Justice, et al., G.R. No. 197291, April 3, 2013.

[10] Special People Inc., Foundation et al. vs. Nestor M. Canda, et al., G.R. No. 160932, January 14, 2013.

[11] Note 10.

[12] As cited in Maylem vs. Ellano, et al., G.R. No. 162721, July 13, 2009.

[13] G.R. No. 180778, October 16, 2009.

[14] Ibid.

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