

CONCEPCION MAKABINGKIL, PETITIONER, V, HON. NICASIO YATCO, JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, QUEZON CITY BRANCH, PROVINCIAL SHERIFF OF RIZAL AND SHERIFF OF QUEZON C...*G. R. No. L-23174. September 18, 1967*

Ponente: FERNANDO, J.

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The principal legal question posed by this original petition for a writ of certiorari and prohibition with preliminary injunction is one of procedural due process. It arose from the applicability of an order for demolition of April 18, 1964 to the house of petitioner, such order arising from the finality of a judgment in Civil Case No. Q-5866 of the Court of First Instance of Quezon City, thereafter affirmed by the Court of Appeals in CA-G.R. No. 31169-R, petitioner contending that she was not a party to such a case and was denied a chance to intervene therein.

The petition for certiorari and prohibition with preliminary injunction was filed with this Court on June 13, 1964, petitioner stating that she was a resident of and with postal address at Block-E-I 48, East Avenue Subdivision, Pinahan Area, Diliman, Quezon City, Philippines. As respondents, she named the then acting Judge of Court of First Instance of Rizal, Quezon City Branch, the Hon. Nicasio Yatco; the then Provincial Sheriff of Rizal and the Sheriff of Quezon City; and respondent spouses Irene de Leon and Vicente Llanes,[1]

It was then alleged that on February 26, 1964 when the Deputy Sheriff of Quezon City served upon petitioner copy of an alias writ of execution, she learned for the first time that a decision was rendered in a certain Civil Case No. Q-5866 with respondent spouses, plaintiffs therein, being the prevailing parties against the People's Homesite and Housing Corporation (herein referred to as the PHHC), a copy of which writ of execution as well as the final decision of the Court of Appeals affirming the lower court decision being included as annexes.[2] Then on April 15, 1964, respondent spouses as plaintiffs in the above Civil Case No. Q-5866 filed an ex-parte motion for a special order of demolition, which motion was set for hearing on April 18, 1964, on which very day, the order of the court granting the same was issued addressed to the Sheriff of Quezon City "to demolish the houses existing in the premises of the land in question, which have been erected or occupied by squatters, and thereafter deliver the same to the spouses." [3]

Upon being served with such order of demolition on June 13, 1964, petitioner the next day immediately filed an urgent petition to lift the alias writ of execution and order of demolition with preliminary injunction alleging that she "is not a squatter on the Lot in question, she having acquired her rights and interest over the said Lot by virtue of Resolution No. 370 dated December 18, 1959, and again by virtue of Resolution No. 550, dated May 16, 1961, and that all of said Resolutions were duly passed upon by the Board of Directors of defendant PHHC, and her house having been improved by virtue of the authority of the General Manager of the PHHC to secure for herself a building permit from the authorities concerned, and that her rights over the said Lot in question were acquired after due investigation of her qualification to acquire the same with priority from any other person or persons who

are not occupants of the subject Lot," more so as to persons who are disqualified in accordance with law and that granting arguendo that plaintiff spouses did have a conditional contract to sell executed by defendant PHHC, the same was obtained through fraud and misrepresentation or in connivance with some well placed employees of the PHHC and that such contract "is against the law," referring to the PHHC Charter as amended, and the many established policies of the said Government Corporation, "which facts could have been duly proved by petitioner if, only, she was impleaded in the complaint, or given a chance to intervene. . .[4]

It was then asserted that although "a decision was rendered in the instant case, the same should not bind petitioner because, as already stated, your petitioner had not been impleaded in the plaintiffs complaint, or at least, given a chance to intervene , . ." Petitioner, in the said urgent petition, likewise invoked the principle that respondent spouses did not exhaust the administrative remedies before filing the action and that the court was in error in declaring null and void Resolution No. 550 of the PHHC in her favor as shown by an Executive Directive of February 20, 1964 upholding her rights and interest on the lot in question, and ordering the cancellation of the conditional contract to sell in favor of respondent Irene de Leon. She then reiterated that the decision in Civil Case No. Q-5866 could not in any way bind her for not being a party in such a case and that to allow respondent spouses to take possession of the lot in question and remove petitioner's house and other improvements legally constructed thereon by virtue of such order of demolition dated April 18, 1964, would not only cause great and irreparable injury, but would also cause injustice to her by depriving her of her property without due process of law. On the date originally set for the hearing of such urgent petition on June 20, 1964, respondent spouses through counsel requested deferment as well as permission to file a written opposition, which was granted by the court, the hearing being reset on June 27, 1964, but on such subsequent date, without petitioner having as yet been furnished with such written opposition, a fact being made known to the court, respondent Judge "without hearing the matter as alleged in said petition and consequently without any evidence received, denied her petition to lift alias writ of execution and order of demolition with preliminary injunction." [5]

Under the above circumstances, it is petitioner's contention that she could not be bound by the judgment and that the refusal to lift the alias writ of execution and the order of demolition, without hearing the matter as alleged in said petition and without receiving any evidence and her ejection from the lot in question of which she was in actual possession "would constitute a deprivation of property rights without due process of law." [6] The Provincial Sheriff of Rizal and the Sheriff of Quezon City were made respondents for they "threatened to enforce said writ of execution and order of demolition," as a matter of fact advising petitioner that unless a restraining order from a competent court could, be secured, her house would be demolished. [7] She then alleged that to enforce the writ of execution and order of demolition would be "to work unwarranted hardship and irreparable damage and injustice upon her without having been accorded her day in court," reiterating that thereby she would be deprived of her property rights without due process of law as she was a stranger to such a case never having been made a party to it. [8] She then filed this petition for a writ of certiorari and prohibition with preliminary injunction, there being no appeal. [9] She likewise expressed her willingness "to post a bond sufficient in amount as may be determined by this Honorable Court conditioned for the payment of damages that may be awarded in case the writ of preliminary injunction prayed for be found unmeritorious." [10]

On July 15, 1964, a resolution giving due course to the above petition for a writ of certiorari and prohibition, likewise granting the prayer for preliminary injunction upon posting a bond of P1,000.00, was issued by this Court.

In the answer to the petition filed on August 7, 1964, respondents sought to meet the due process question squarely by the allegation that in the aforesaid Case No. Q-5866, upon the finality of which both the writ of execution and the order of demolition were issued "petitioner could have appealed the order . . . denying the

motion for leave to intervene . . ." Moreover, respondents referred to another civil case, Q-5411, wherein respondent spouses as plaintiffs filed a complaint against the PHHC to compel it to execute the conditional contract to sell covering the disputed lot and restraining it from awarding or selling the same to one of the defendants, petitioner herein, alleging further that after they sought to have the said case dismissed without prejudice, the defendant PHHC having executed a conditional contract to sell in favor of the wife, respondent Irene de Leon, which motion was granted in an order of respondent Judge Nicasio Yatco on May 27, 1961, petitioner as defendant could have opposed such motion or could have thereafter appealed. Accordingly, respondents after mentioning that petitioner failed to perfect an appeal in both instances added: "It is therefore wrong to say now that in ejecting the petitioner from this lot, she is unjustly deprived of her property without due process of law." [11].

For further clarification of the inter-relationship between petitioner and the PHHC on the one hand and the respondent spouses and the PHHC on the other, with reference to the disputed lot, the facts as found by the Court of Appeals in its decision of August 31, 1963, affirming the decision in Civil Case No. Q-5866 should prove illuminating. Thus:

"The basic facts are not seriously disputed,

"On January 30, 1957, Plaintiff Irene de Leon filed with the People's Homesite & Housing Corporation, PHHC for convenience, an application to purchase the latter's lot 27, Block E-148 of the East Avenue Subdivision, Quezon City. The application was approved by defendant corporation on February 1, 1957, and accordingly plaintiff was issued an order of payment requiring her to pay in advance 10% or the sum of P1,053.00, of the total value of the property. The advance payment required of her was made and plaintiff was issued a passbook, after which several installments were made.

"On December 18, 1959, the PHHC Board of Directors passed and approved Resolution No. 370 cancelling the award thus made in favor of plaintiff De Leon and, instead, awarding the same property to one Concepcion Makabingkil who, as a squatter on the lot, claims to have a preferential right in the matter of awards. But before this Resolution No. 370 could be implemented and the property formally awarded to Makabingkil, Plaintiff De Leon filed with the Court of First Instance of Quezon City a complaint for injunction docketed as Civil Case No. Q-5411 against the PHHC, Makabingkil and three others. Upon application, a Writ of preliminary injunction was issued by that Court temporarily enjoining the PHHC from implementing said resolution.

"At a pre-trial conference in said Civil Case Q-5411, the PHHC, duly represented by its authorized officers and representatives, agreed to reconsider Res. 370 and to respect the award previously made in favor of De Leon, and, pursuant thereto, passed and approved Resolution No. 430 which authorizes the award of the lot in dispute to plaintiff De Leon. Making good its commitment, the PHHC on March 27, 1961, executed a Conditional Contract to Sell the property to plaintiff Irene de Leon, who, on the basis of that pre-trial agreement and the Contract to Sell thus executed in her favor by the PHHC, moved to dismiss Civil Case Q-5411 without prejudice and fulfilled partly her obligation under the Contract by paying several installment more. Without objection on the part of either of the defendants therein, the case, as prayed for, was ordered dismissed without prejudice.

"Shortly after the dismissal of Civil Case No. Q-5411, or on May 16, 1961, the Board again passed and approved Resolution No. 550 reconsidering altogether its commitments to plaintiff De Leon, totally disregarding the Conditional Contract to Sell previously executed, and rewarding the subject-property to Makabingkil."

It was precisely at that stage that the above decision of the Court of Appeals noted that respondent spouses as plaintiffs instituted Civil Case Q-5866 for injunction with damages "against the PHHC seeking, among others, to

enjoin the latter, its officers, representatives, agents or persons acting for and in its behalf from implementing PHHC Board Resolution No, 550 dated May 16, 1961, or from awarding or selling the lot in question to Concepcion Makabingkil or any other person or persons " What is even more noteworthy is that as shown in the petition, petitioner Makabingkil was at no time named a party and could not therefore be heard on a matter wherein her vital rights were undoubtedly involved.

From the above recital of undisputed facts, the picture clearly emerges. Petitioner was indeed denied due process. This petition for certiorari and prohibition possesses merit.

As far back as 1908, *U.S. v. Ling Su Fan*,^[12] this Court affixed the imprimatur of its approval on Webster's definition of procedural due process. Thus: "By the law of the land is more clearly intended the general law, a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial."^[3] This Court in a 1924 decision, *Lopez v. Director of Lands*, after quoting the above added that due process "contemplates notice and opportunity to be heard before judgment is rendered, affecting one's person or property." It is satisfied according to another leading decision: "if the following conditions are present, namely: (1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it; (2) jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceeding; (3) the defendant must be given an opportunity to be heard; and (4) judgment must be rendered upon lawful hearing." ^[14]

The due process concept is thus a vital living force in our jurisprudence. It was so announced in an impressive number of decisions, not all of which need be recounted here. Fidelity to such a view has been reinforced by time. Thus in *Cuaycong v. Sengbengco*,^[15] decided in 1960, this Court through the then Justice, now Chief Justice, Concepcion declared that "acts of Congress, as well as those of the Executive, can deny due process only under pain of nullity, and judicial proceedings suffering from the same flaw are subject to the same sanction, any statutory provision to the contrary notwithstanding." Only lately, this Court through Justice Bengzon reiterated that the due process clause "is designed to secure justice as a living reality; not to sacrifice it by paying undue homage to formality."^[16]

A 1957 decision, *Cruzcosa v. Concepcion*,^[17] is even more illuminating in so far as the availability of the remedy sought is concerned. In the language of this Court, speaking through Justice J.B.L. Reyes: "The petition is clearly meritorious. Petitioners were conclusively found by the Court of Appeals to be co-owners of the building in question. Having an interest therein, they should have been made parties to the ejectment proceedings to give them a chance to protect their rights; and not having been made parties thereto, they are not bound and can not be affected by the judgment rendered therein against their co-owner Catalino Cruzcosa, Jr. . . ." Two due process cases deal specifically with a writ of execution that could not validly be enforced against a party who was not given his day in court, *Sicat v. Reyes*,^[18] and *Hamoy v. Batingolo*.^[19] According to the former: "The above agreement, which served as basis for the ejectment of Alipio Sicat, cannot be binding and conclusive upon the latter, who is not a party to the case. Indeed, that order, as well as the writ for execution, cannot legally be enforced against Alipio Sicat for the simple reason that he was not given his day in court." From the latter: "The issue raised in the motion of Rangar is not involved in the appeal for it concerns a right which he claims over the property which has not so far been litigated for the reason that he was not made a party to the case either as plaintiff or as defendant He only came to know of the litigation when he was forced out of the property by the sheriff, and so he filed the present motion to be heard and prove his title to the property. This he has the right to do as the most expeditious manner to protect his interest instead of filing a separate action which generally is long, tedious and protracted."

Petitioner was therefore right in asserting that "the separate and collective effect of the Writ of Execution and

Order of Demolition . . . and the respondent Provincial Sheriff's threat to enforce [the same] is to work unwarranted hardship and irreparable damage and injustice upon the Petitioner who has not been accorded her day in court." It would as claimed be tantamount to a deprivation of her property rights without due process of law. She is entitled to redress, This petition for certiorari and prohibition must be granted.

Petitioner's right to due process must be respected. This Court could go even further. This petition for certiorari and prohibition could be utilized to determine who has the right to the disputed lot. This approach of resolving the issue is not without precedent. *Francisco v. City of Davao*, [20] decided by the then Justice, now Chief Justice, Concepcion, points the way: . . . The ends of Justice would not be served, if we now dismiss the case — over nine (9) years after it has been initiated — and bade the plaintiffs to start all over again, following the procedure that the defendants had asked the lower court, but which the latter refused, to require. At any rate, since the legal question raised in the pleadings has reached this Court, and the assessment complained of is manifestly violative of the clear and express provision of the law, it is best that we decide said question, instead of further deferring its resolution." The records of the case however show that another litigation involving petitioner, the PHHC, and the respondent spouses is still pending adjudication. For that reason, any further pronouncement from this Court would be inappropriate.

Wherefore, this petition for certiorari and prohibition is granted and the preliminary injunction issued made permanent. With costs against respondent spouses, Irene de Leon and Vicente Llanes.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Beng-zon, J.P.; Sanchez, Ruiz Castro and Angeles, JJ., concur.

Petition granted.

[1] Paragraph 1, Petition.

[2] Paragraph 2, Petition, Annexes A & B.

[3] Paragraph 3, Petition, Annexes C & D.

[4] Paragraph 4, Petition, Annexes E, F, G, & H.

[5] Paragraph 4, Petition, Annexes J & K.

[6] Paragraphs 5 & 6, Petition.

[7] Paragraphs 5 & 6, Petition.

[8] Paragraph 7, Petition, Annex L.

[9] Paragraphs 8 & 9, Petition.

[10] Paragraph 11 Petition.

[11] Answer, Annexes 1, 2, 4, 5 & 6.

[12] 10 Phil. 104, 111. In a 1965 decision, *Albert v. University Publishing Co.*, L-19118 this definition of Webster was referred to, Cf. Reyes, J.B.L., J. con. in *Garcia v. Salcedo*, L-19748, Sept. 13, 1962.

[13] 47 Phil. 23, 32.

[14] Banco Español-Filipino v. Palanca (1918) 37 Phil. 921, 934.

[15] L-11897. Here decision of the lower court was held as "suffering from a fatal infirmity, for want of due process," it being shown that no notice to a party adversely affected was ever made.

[16] Albert v. Universal Publishing Co.; L-19118, January 30, 1965.

[17] 101 Phil. 147, In the excerpt quoted, the following cases were referred to: Pobre v. Blanco (1910) 17 Phil. 156; Tayzon v. Ycasiano (1949) 83 Phil. 921; Galang v. Uytiepo (1952) 92 Phil. 344. In the Galang decision, Omana v. Gatulayao (1941) 73 Phil. 66; Santiago v. Sheriff (1946) 77 Phil. 740 and Gozon v. De la Rosa (1947) 77 Phil. 919 were cited.

[18] 100 Phil. 505 (1956).

[19] L-18119, August 30, 1962.

[20] L-20654, December 24, 1964.

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