

CARIDAD O. DE GALLEGO, PETITIONER-APPELLANT, VS. LAND AUTHORITY (FORMERLY LAND TENURE ADMINISTRATION), OPPOSITOR-APPELLEE.

G.R. No. L-26848. August 17, 1981

Ponente: GUERRERO, J.

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GUERRERO, J.:

The petitioner herein, who is the registered owner of a parcel of land situated in the Municipality of Parañaque, Rizal and covered by TCT No. 46402 of the Registry of Deeds of Rizal, seeks the cancellation of the following 'CONDITIONS' appearing in the Memorandum of Encumbrances of the aforementioned Transfer Certificate of Title No. 46402, to wit:

- "1. That the parcel of land described in this certificate of title, shall not be sold, assigned, encumbered, mortgaged or transferred, within the period of five (5) years from the date hereof without first obtaining the written consent of the Secretary of Agriculture and Natural Resources;
2. That except by hereditary succession, it shall not be conveyed, transferred to, assigned in favor of any person who is not landless and disqualified to acquire or own land in the Philippines;
3. That violation of either of the next two preceding paragraph shall be sufficient ground for the Secretary of Agriculture and Natural Resources or his duly authorized representative to take such action as may be necessary for the reversion of the land to the government." (Doc. No. 1858, page 57, Book XXVI, S. of 1954 of Notary Public of Manila, Andres Urrutia) Date of instrument - June 28, 1954. Date of the inscription - June 30, 1954 - 10:10 a.m."

In her Petition for Cancellation of Encumbrance filed with the Court of First Instance of Rizal, Branch 7, in LRC Case No. 458, it is alleged that the said conditions were entered on June 30, 1954 and a period of five (5) years have since then elapsed so that Condition No. 1 has long become academic; that the aforesaid parcel of land formerly formed part of a tract of land which the Government acquired for subdivision into residential lots with the principal objective of distributing the same to the landless and thereby allow more people to have their own homes for which reason, Conditions Nos. 2 and 3 above were entered as encumbrances on the said certificate of title; that the area wherein the above-mentioned parcel of land is comprised has since become commercial community, fronting, as it does, the Manila Bay, and not only said parcel of land but the immediate vicinity thereof now contain improvements devoted purely to commercial purposes; that by reason of the foregoing, the objective of the Government in imposing Conditions Nos. (2) and (3) above has lost its meaning inasmuch as the value of said property has become prohibitive to any landless who desire to establish his home therein; that to allow the said Conditions to remain and to affect said parcel of land will only be a deterrent to the economic development and progress of the country; and that in line with the country's program of economic development, therefore, said Conditions should be eliminated.

Respondent opposed the Petition for Cancellation insofar as Conditions Nos. (2) and (3) are concerned on the

ground that Condition No. 2 carries with it no prescriptive period at all and the same is considered perpetual in character and any subsequent transactions or dealings involving the land in question must necessarily be with the written consent and permission of the Land Authority, and that Condition No. 3 is like-wise perpetual in character. Respondent, however, agrees that Condition No. 1 may be cancelled since it carries the five-year prescriptive period.

In his Order dated July 19, 1966, Presiding Judge Francisco dela Rosa, finding the grounds relied upon in the Opposition to be well-taken, denied the Petition for lack of merit.

Petitioner thru Counsel filed a Motion for Re-consideration, alleging among others, that subsequent to the filing of the Opposition, counsel made representations with the respondent for a withdrawal of the Opposition in line with the position taken by the same office in connection with G.L.R.O. Record No. 7672 of the Court of First Instance of Rizal, Pasig, Branch X entitled, "Sotera Duavit Vda. de Bautista, et al., petitioners," wherein no opposition was filed by the Land Authority to a similar petition for the reason that the property involved was already commercial so that the Land Authority cannot maintain inconsistent position, otherwise it may be guilty of discrimination, arbitrariness, or grave abuse of its official discretion.

Petitioner further pointed out that as to the fact that the land in question is a commercial property and is situated in a commercial territory, namely, fronting the Roxas Boulevard, Parañaque, Rizal, there has been no controversy and the court can take judicial notice thereof as a matter of common knowledge, as in fact the property is presently occupied by the night-club "EL MUNDO" and is classified for real estate taxation as commercial.

It is likewise insisted by petitioner that the primary intention of the restriction against transfers or conveyances of the property except to the landless and except by hereditary succession in order to insure that more people shall own residential homes, has been lost by the transformation of the property from residential to commercial since the landless who may want to establish their residential homes can no longer afford to pay the commercial price of this commercial property and following the principle that "when the reason for the law ceases, the law ceases," the said restriction should be eliminated to allow the afore-mentioned property to contribute to the economic development of the country.

The attention of the court a quo was also called to the fact that the petitioner who is the wife of former Ambassador Manuel Gallego, is not a landless individual, nor was she landless at the time when the said property was acquired by her, the fact being that the restriction refers only to voluntary conveyances and did not comprehend sales by public auction, as in the particular case, where the petitioner came to own the property as the highest bidder in a foreclosure sale by reason of a mortgage thereon. Petitioner concludes that accordingly, the restriction cannot be intrinsically intended to limit the ownership of this type of property to only the landless where it may be acquired by a landed owner thru an involuntary sale.

The court denied the Motion for Reconsideration in its Order of September 8, 1966, hence the present appeal to this Court.

Petitioner submits a lone assignment of error, and that is, that the trial court erred in denying the petition for cancellation and in denying the motion for reconsideration.

In Petitioner's Brief, it is pointed out that the Order dated July 19, 1966 denying the Petition for Cancellation, as well as the Order of September 8, 1966 denying the Motion for Reconsideration, did not express the reasons in support of said Order. Petitioner argues that Condition No. (1) in the Memorandum of Encumbrances of TCT No. 46402 had long become academic because five years have already elapsed from the date the said annotation was made on June 30, 1954, inasmuch as the Petition for Cancellation was filed on February 11, 1966, almost twelve

years after the entry of such condition.

Oppositor Land Authority does not oppose the cancellation of Condition No. (1), hence, finding the said cancellation to be in order, the said condition is hereby ordered cancelled.

Petitioner further contends that Conditions No. (2) and (3) have lost any sound basis in that while the subject parcel of land was originally a residential lot, the classification of the property had been changed to that of commercial, as evidenced by the present tax declaration thereof (Exhibit "B"). According to petitioner, the original intention of the controverted condition to restrict ownership of subject property by people who could utilize the same as their residence has lost its meaning for the said property has gone beyond the reach of any individual to acquire for purely residential purposes.

It is likewise claimed that the inhibition in Condition No. (2) is not entirely absolute because a person who is not landless may still properly acquire the said property in a foreclosure of a mortgage thereon, as in the instant case where petitioner, who is the wife of former Ambassador Manuel V. Gallego, is not landless and had acquired the subject property, not by voluntary conveyance in her favor but as the highest bidder in the public auction sale thereof in relation to a foreclosure of a mortgage involving the said property, which argument assumes that Condition No. (2) limits the restriction only to a conventional or voluntary sale, transfer or assignment of the property, excluding mortgage or encumbrance whereas Condition No. (1) inhibits not only the sale but also the encumbrance or mortgage of the subject land.

Petitioner's contentions are without merit and We reject the same.

Conditions No. (2) and (3) are found or provided in Section 17 and 18 of Land Registration Order No. R-3 under the subject "Rules and Regulations Governing the Acquisition and Disposition of Landed Estate," approved November 15, 1951 by the Secretary of Agriculture and Natural Resources. These sections provide as follows:

"16. Prohibition to Alienate. - The applicant shall not sell, assign, encumber, mortgage or transfer, his rights under the agreement to sell or in the property subject thereof without first obtaining the written consent of the Secretary of Agriculture and Natural Resources and this condition shall subsist until the lapse of five (5) years from the date of the execution of the final deed of sale in his favor and shall be annotated as an encumbrance on the certificate of title of the property that may be issued in his favor.

"17. Conveyance of Lands, Covered by Final Deeds of Sale. - Except by hereditary succession, no lands acquired hereunder shall be transferred or assigned to any individual unless he be landless and not otherwise disqualified from acquiring and owning lands in the Philippines. This prohibition shall be made a condition in all deeds of sale and shall be annotated as encumbrance in the certificate of title.

"18. Violation of the two preceding paragraphs: its effect. - Any sale, assignment, encumbrance, mortgage, or transfer made in violation of the provisions of the next two preceding paragraphs hereof is null and void, and shall be sufficient ground for the Secretary of Agriculture and Natural Resources to cancel the deed of sale and to order the reversion of the land to the government and the forfeiture of whatever payments made on account thereof. In case, however, a deed of sale has already been issued, the violation of the said provisions shall be sufficient ground for the Secretary of Agriculture and Natural Resources to take appropriate action in court with a view to obtaining the reversion of the land involved to the government. All lands reverted to the government shall be disposed of as vacant lot."

It is pertinent to state here that pursuant to the provisions of Section 4, Article XIII of the 1935 Constitution of the Philippines which mandated that Congress may authorize, upon payment of just compensation, the expropriation of land to be subdivided into small lots and conveyed at cost to individuals, Commonwealth Act 539 enacted May 26, 1940, authorized the President of the Philippines to acquire private lands or any interest

therein, thru purchase or expropriation and to subdivide the same into home lots or small farms for resale at reasonable prices and under such conditions as he may fix to their bonafide tenants or occupants or to private individuals who will work the lands themselves and who are qualified to acquire and own lands in the Philippines (Section 1, Commonwealth Act 539). And under Section 2 of the same Act, the President may designate any department, bureau, office, or instrumentality of the National Government, or he may organize a new agency to carry out the objectives of the Act, and for this purpose, the agency so created or designated shall be considered a public corporation. Commonwealth Act 539 amended Commonwealth Act No. 20, as amended by Commonwealth Act 260, and Commonwealth Act No. 378, as amended by Commonwealth Act 420.

As indicated earlier, Sections 16, 17 and 18 of Lands Administrative Order No. R-3 dated October 19, 1951 are the sources which gave rise to the annotation of Conditions Nos. 1, 2 and 3 on the title of subject property. The said Order was published in the Official Gazette of December, 1951, pp. 6075 to 6078, Volume 47, No. 12, and has the force and effect of law. (*Javillonar vs. Land Tenure Administration*, G.R. No. 10303, Aug. 22, 1958, 104 Phil. 323)

As the Administrative Order itself provides, the rules and regulations governing the acquisition and disposition of private estates were promulgated for the information and guidance of all concerned "(p)ursuant to the provisions of section 4, article XIII of the Constitution of the Philippines, section 79 (B) of the Revised Administrative Code, and Executive Order No. 376, dated November 28, 1950."

Conditions Nos. 2 and 3, having been imposed pursuant to an Administrative Order which has the force and effect of the law, are therefore binding upon any person who acquires title to the same, it appearing that said Conditions are annotated as encumbrances on the back of the Certificate of Title of the land. Moreover, the said Conditions are not contrary to law, morals, customs, or public policy. In fact, these Conditions had been imposed in order to implement more effectively the main purpose of the constitutional provision which is to break up landed estates into reasonably small portions and to discourage the concentration of excessive landed wealth in an entity or a few individuals. (*Republic vs. Baylosis*, 96 Phil. 461) Incidentally, the New Constitution of 1973 provided a modification of the original provision in the 1935 Constitution, thus: "The National Assembly may authorize, upon payment of just compensation, the expropriation of private lands to be subdivided into small lots and conveyed at cost to deserving citizens."

These two encumbrances or Conditions annotated on the back of TCT 46402 imposed by and pursuant to the Administrative Order of the Secretary of Agriculture and Natural Resources may not, therefore, be cancelled for under Section 39 of the Land Registration Act,

"Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value in good faith shall hold the same free of all encumbrance except those noted on said certificate, and any of the following encumbrances which may be subsisting, namely:

First. Liens, claims, or rights arising or existing under the laws or Constitution of the United States or of the Philippine Islands which the statutes of the Philippine Islands cannot require to appear of record in the registry;

Second. Taxes within two years after same become due and payable;

Third. Any public highway, way, private way established by law, or any Government irrigation canal or lateral thereof, where the certificate of title does not state that the boundaries of such highway, way, or irrigation canal or lateral thereof, have been determined.

But if there are easements or other rights appurtenant to a parcel of registered land which for any reason have failed to be registered, such easements or rights shall remain so appurtenant notwithstanding such failure, and

shall be held to pass with the land until cut off or extinguished by the registration of the servient estate, or in any other manner. (As amended by Act No. 2011, and Sec. 4, Act No. 3621.)"

Presidential Decree No. 1529, amending and codifying the laws relative to registration of pro-perty and for other purposes, promulgated June 11, 1978, substantially contains the same provision under Section 44 thereof, which provides:

"Every registered owner receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land taking a certificate of title for value and in good faith, shall hold the same free from all encumbrances except those noted on said certificate and any of the following encumbrances which may be sub-sisting, namely:

First. Liens, claims or rights arising or existing under the laws and Constitution of the Philippines which are not by law required to appear of record in the Registry of Deeds in order to be valid against subsequent purchasers or encumbrancers of record;

Second. Unpaid real estate taxes levied and assessed within two years immediately preceding the acquisition of any right over the land by an innocent purchaser for value, without pre-judice to the right of the government to collect taxes payable before that period from the delinquent taxpayer alone;

Third. Any public highway or private way established or recognized by law, or any government irrigation canal or la-teral thereof, if the certificate of title does not state that the boundaries of such highway or irrigation canal or lateral thereof have been determined;

Fourth. Any disposition of the property or limitation on the use thereof by virtue of, or pursuant to, Presidential Decree No. 27 or any other law or regula-tions on agrarian reform."

Until and unless the law, or the Administrative Order which has the force and effect of law, is re-pealed, amended, or otherwise altered or modified, the said encumbrances must remain, notwithstanding the contention of petitioner that a previous governor of the Land Authority had not opposed a similar peti-tion for cancellation in Sotera Duavit Vda. de Bau-tista and Jaime Bautista, G.L.R.O. Record No. 7672 of the Court of First Instance of Rizal, Branch X, for a wrong act cannot be cured by the commission of another wrong. Laws are repealed only by subsequent ones and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary. (Article 7, New Civil Code)

Neither can petitioner's arguments that the lot in question contains improvements, a nightclub devoted to a purely commercial purpose, that the value of the land has become prohibitive to any landless who desires to establish his house thereon, that to allow the said Conditions to remain and to affect said parcel of land will only be a deterrent to the economic development and progress of the country and that in line with the country's program of economic development, said Conditions should be eliminated, be sustained. The courts are not concerned with the wisdom, necessity or propriety of the law, for these are the particular province of the legislative. As this Court said in *Morfe vs. Mutuc*, L-20387, January 31, 1968, 22 SCRA 424, 450, speaking thru Justice (now Chief Justice) Fernando, citing *Angara vs. Electoral Commission*, 63 Phil. 139, "It is well to remember, that this Court, in the language of Justice Laurel, 'does not pass upon questions of wisdom, justice or expediency of legislation.'"

WHEREFORE, IN VIEW OF THE FOREGOING, the Orders appealed from dated July 19, 1966 and September 8, 1966 are hereby MODIFIED in the sense that Condition No. (1) inscribed as an encumbrance in Transfer Certificate of Title No. 46402 (Rizal Registry) covering Lot 4, Block 4, Psd-10988 Baclaran Estate, Baclaran, Parañaque, Rizal, under the name of petitioner Caridad O. de Gallego, is hereby ordered cancelled, the five-year period stated therein having already expired, and that Conditions No. (2) and (3) shall remain as they are.

No costs.

SO ORDERED.

Makasiar, Fernandez, and Melencio-Herrera, JJ., concur.

Teehankee, Acting C.J., in the result.

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