

**LUZON AVENUE SETTLERS NEIGHBORHOOD ASSOCIATION, INC.,
REPRESENTED BY ITS PRESIDENT, EDGAR O. LAGUE, PETITIONER,
VS. THE HONORABLE PRESIDING JUDGE, REGIONAL TRIAL COURT,
BRANCH 2...**

Ponente: CARANDANG, J.

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CARANDANG, J.:

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to annul and set aside, on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction, the public respondent's Order[1] dated September 6, 2013 which denied petitioner's application for the issuance of a temporary restraining order (TRO) and the Order[2] dated October 7, 2013 which denied the motion for reconsideration.

The facts of the case:

On March 12, 2012, the City Council of Quezon City, on its 53rd Regular Session, enacted Ordinance No. SP-2138, S-2012, entitled “An Ordinance Approving the Subdivision Plan of Samahang Masigasig Ka “SAMAKA” Homeowners Association, Inc. with Two Hundred Forty Seven (247) Lots, Community Mortgage Program (CMP) Project, Located at Lot 797-B-1-C, Psd-20434, Purok 4, Luzon Avenue, Barangay Culiati, Quezon City, Metro Manila Registered in the Name of Rafael Pilares, et al. Covered by Transfer Certificate of Title Numbered 004-RT-2011005571 (216103) of the Registry of Deeds of Quezon City, Containing an Aggregate Area of Ten Thousand (10,000) Square Meters, as Applied for by its HOA President, Mr. Francisco E. Dizon with Office Address at the same Project Location, in Compliance with the Minimum Requirements of the Implementing Standards, Rules and Regulations of Quezon City Ordinance No. SP-56, S-93 and Batas Pambansa Bilang 220” and approved by City Mayor Herbert M. Bautista on April 20, 2012.[3]

Petitioner filed a petition[4] for annulment of the above City Ordinance with prayer for prohibition and injunction alleging that it is the owner of the same parcel of land having purchased the same from Julian Tallano, through his attorney-in-fact, Mario Papa. Said lot is a portion of the land registered in the name of Don Esteban Benitez Tallano under TCT No. T-498. Petitioner has allowed its members to build and stay in the said land. The Samahang Masigasig Ka (“SAMAKA”), petitioner's claimed, is not the owner of said land subject of the Subdivision Plan considering that the Contract/ Agreement signed on April 6, 2010 between the Heirs of Pilares, represented by their Attorney-in-Fact, Ricardo C. Pilares, Jr. (vendor) and “SAMAKA”, represented by its President, Francisco E. Dizon, was just an offer to sell the land and not a transfer document. The Subdivision Plan of Lot 797-B-1-C, Psd-20434 is fictitious because Subdivision Plan Psd-20434 was for a parcel of land with an area of 13,839 square meters located at Barrio Putatan, Municipality of Muntinlupa, Province of Rizal in the name of Ciriaco Vivora. Petitioners further averred that SAMAKA is so determined to unlawfully deprive petitioners of its property in order that its supposed project will be funded by the Social Housing Finance Corporation in the amount of P25,000,000.00 and sell the 247 subdivision lots to its member at a huge profit. Private respondent Marlowe Y. Jacuting has likewise issued “PAUNAWA SA PAGBABAKLAS” on August 16, 2013 informing the members of petitioner that their houses and other structures will be demolished within ten (10) days from receipt

of the same, under the provisions of Article VII, Section 28, paragraph (a) of R.A. 7279. Petitioner argued that the “PAUNAWA SA PAGBABAKLAS” violates the Memorandum of Understanding between the Quezon City Trial Courts and City Mayor Herbert Bautista giving notice to the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition.

Subsequently, petitioner filed an urgent motion for the issuance of TRO to enjoin herein private respondents from implementing the “PAUNAWA SA PAGBABAKLAS” contending that the same is arbitrary, confiscatory and contrary to law, fair play and equity. It was issued in excess of jurisdiction and with grave abuse of discretion. Petitioner alleged that the application for the issuance of TRO is of extreme urgency and they will suffer grave injustice and irreparable injury if TRO is not issued.

On September 6, 2013, the trial court issued the first assailed Order denying petitioner's application for a TRO ratiocinating that petitioner failed to show a clear and unmistakable right which needs the protection of an injunctive writ. Moreover, the validity of TCT NO. T-498 under the name of Don Esteban Benitez Tallano has not been sufficiently established; hence, petitioner's claim of ownership is unsupported.

Petitioner moved for reconsideration but the same was denied in the second assailed Order dated October 7, 2013.

Hence, this petition raising this lone issue for resolution, viz:

WHETHER OR NOT PUBLIC RESPONDENT REGIONAL TRIAL COURT IN DISMISSING OR DENYING PETITIONER'S URGENT MOTION FOR THE ISSUANCE OF A TEMPORARY RESTRAINING ORDER, HAS ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION.

The petition is devoid of merit.

The pivotal issue to be resolved herein is whether there was grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the trial court when it denied petitioner's application for the issuance of a TRO.

The special civil action for certiorari under Rule 65 is intended to correct errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Grave abuse of discretion means such capricious or whimsical exercise of judgment which is equivalent to lack of jurisdiction. To justify the issuance of the writ of certiorari, the abuse of discretion must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[5]

No such grave abuse of discretion can be seen in this case. There is sufficient legal basis to deny the application of a TRO considering that petitioner failed to establish a clear and unmistakable right for the issuance of an injunctive writ.

The requisites for preliminary injunctive relief are: (a) the invasion of right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.[6] The onus probandi is on movant to show that there exists a right to be protected, which is directly threatened by the act sought to be enjoined.[7]

It bears to stress that the “PAUNAWA SA PAGBABAKLAS” was issued pursuant to City Ordinance No. SP-2138, S-2012 in compliance with the minimum requirements of the Implementing Standards, Rules and Regulations of Quezon City Ordinance No. SP-56, S-93 and Batas Pambansa Bilang 220. City Ordinance No. SP-2138, S-2012 approved the Subdivision Plan of SAMAKA Homeowners Association, Inc. for purposes of availing the Community Mortgage Program (CMP) of the government which will benefit two hundred forty seven

(247) families. Based on the approved Subdivision Plan, SAMAKA is undergoing re-blocking of their respective residential structures, including the opening of road lots, alleys and clearing the open space. Despite several meetings conducted and after due notice, petitioner's members still refuse to faithfully comply with the required re-blocking of their respective structures based on the approved subdivision plan. Hence, pursuant to Section 28, par. (a)[8] of R.A. 7279, otherwise known as the Urban Development and Housing Act of 1992, the TASK Force COPRISS, as authorized by the homeowners association, was directed to cause the re-blocking of the structures of petitioner's members.

As ruled by the trial court, petitioner failed to establish that it has a clear and unmistakable right over the subject property that needs to be protected. In the main, petitioner anchors its motion for the issuance of a TRO on the allegation that it is the owner of the said parcel of land having purchased the same from its true owner, and its members have built their houses and other structures thereon.

"Clear legal right," within the meaning of Rule 58 of the Rules of Court, contemplates a right "clearly founded in or granted by law." Any hint of doubt or dispute on the asserted legal right precludes the grant of preliminary injunctive relief.[9] In this case, petitioner's claim of ownership is unsupported considering that the TCT No. T-498 under the name of Don Esteban Benitez Tallano, which allegedly covers the said parcel of land, is of questionable validity. Further, the title of Don Tallano does not appear to include a property in Quezon City, said the trial court.

Petitioner cannot, for purposes of issuing a TRO, assail the validity of the on-going CMP as stated in the present petition. Foremost, petitioner has the burden to prove that it has a clear legal right over the subject parcel of land. Having failed to do so, the trial court did not commit grave abuse of discretion in denying the issuance of a TRO.

WHEREFORE, finding no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent, the instant petition is DENIED for lack of merit.

SO ORDERED.

Barza, and Reyes-Carpio, JJ., concur.

[1] Rollo, pp. 13-16.

[2] Rollo, p. 17.

[3] Rollo, pp. 65-67.

[4] Rollo, pp. 61-64.

[5] Julie's Franchise Corporation vs. Ruiz, G.R. No. 180988, August 28, 2009.

[6] Philippine School of Business Administration Quezon City vs. Hon. Lita S. Tolentino-Genilo, G.R. No. 159277, December 21, 2004.

[7] Gustilo vs. Real, A.M. No. MTJ-00-1250. February 28, 2001.

[8] Under Sec. 28 of the Urban Development and Housing Act of 1992 (RA 7279), eviction or demolition may be allowed "when persons or entities occupy danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, and other public places such as sidewalks, roads, parks and playgrounds".

[9] Executive Secretary vs. Forerunner Multi Resources, Inc., G.R. No. 199324, January 7, 2013.

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