

**METROPOLITAN WATERWORKS & SEWERAGE SYSTEM,
PETITIONER, VS. HON. NICANOR S. SISON, AS PRESIDING JUDGE OF
THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH XXII, SITTING
AT PASIG, RIZA...**

G.R. No. L-40309. August 31, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Petition for review on certiorari to set aside the order of the Court of First Instance of Rizal, now Regional Trial Court, in Land Registration Case No. 6563, dated April 6, 1970, directing "the Register of Deeds of Caloocan City, upon payment of the prescribed fees, to reconstitute Transfer Certificates of Titles [N.A.] covering Lot Nos. 946, 947 and 948, of Tala Estate Caloocan City"; and the order dated September 4, 1974 declaring "Transfer Certificates of Title Nos. [N.A.] 5[R], [N.A.] 6[R] and [N.A.] 7[R] as well as all the titles subsequently issued therefrom as valid and binding in accordance with the provisions of Rep. Act 26."

Said orders are assailed on the grounds that the proceeding a quo was conducted in violation of the strict and mandatory requirements of Rep. Act No. 26 as to publication and notice of a judicial petition for reconstitution of lost certificates of title, and that the Torrens titles covering the said lands, issued in the names of petitioner way back in 1931 and 1933, are existing and in full force and effect.

The basic facts are not disputed. On February 4, 1970, the Heirs of Don Mariano de San Pedro, Domingo Cecilio and the Urban Agro Products Inc., private respondents herein, filed in the Court of First Instance of Rizal a verified petition for reconstitution of the transfer certificates of title covering Lot Nos. 946, 947 and 948 of the Tala Estate, Caloocan City, which were allegedly lost during the last World War. The material averments of the petition are that private respondents are the owners of said three (3) parcels of land, their title thereto being evidenced by "transfer certificates of title Nos. [N.A.], the original copies thereof in the office of the Register of Deeds as well as the owner's duplicates in their possession were lost or destroyed during the last World War; that all efforts to recover them had been unavailing; that at the time of their loss or destruction, said titles were in full force and effect; that no co-owner's, mortgagee's or lessee's copies thereof had been issued; that there is no existing lien or encumbrance affecting the properties involved; that petitioners are in actual, public, continuous and uninterrupted possession of said lands, and all improvements existing thereon are owned by them; and that no deed or instrument affecting said properties has been registered or pending registration in the office of the Register of Deeds. Petitioners prayed that the transfer certificates of titles covering the said lands be reconstituted in their names on the basis of the plans and technical descriptions attached to the petition.

On February 5, 1970, the trial court, then pre-sided by Judge Benjamin H. Aquino, issued an order setting the hearing of the petition on March 7, 1970 at 8:30 A.M., and ordering all interested persons to appear and show cause, if any, why the petition should not be granted. Likewise, Judge Aquino directed the publication of the order in the Manila Daily Bulletin, a newspaper of general circulation in the City of Manila and the Province of

Rizal once a week for three (3) consecutive weeks and that copies of the order be posted by the deputy sheriff in the municipal building of Caloocan City and the Provincial Capitol building, Pasig, Rizal, at the expense of private respondents, petitioners therein.

The petition and notice of hearing were published in the Manila Daily Bulletin issues of February 8, 15 and 22, 1970, while copies thereof were posted by the deputy sheriff in bulletin boards of the municipal building of Caloocan City and the Provincial Capitol building at Pasig, Rizal, and served by registered mail to the Director of Lands and the Office of the Solicitor General.

At the hearing on March 7, 1970, Atty. Daniel C. Florida, special counsel in the office of the Solicitor General, appeared for the Director of Lands. He was given 10 days within which to file an opposition to the petition. It appears, however, that because of the written manifestation subsequently filed by Atty. Florida to the effect that the Director of Lands had no opposition to the petition, the trial court, on motion of petitioners therein, issued an order authorizing the deputy clerk or the legal researcher of the court to receive their evidence.

On April 6, 1970, the trial court issued the order granting the petition for reconstitution, the dispositive portion of which reads:

"WHEREFORE, the Court hereby orders the Register of Deeds of Caloocan City, upon payment of the prescribed fees, to reconstitute Transfer Certificates of Title Nos. [N.A.] covering Lot Nos. 946, 947 and 948, Tala Estate, Caloocan City, using as basis thereof the technical descriptions and plan duly verified and approved by the Commissioner of Land Registration." [1]

Pursuant to said order, the Register of Deeds of Caloocan City issued on March 31, 1971 Transfer Certificates of Title Nos. [N.A.] 5[R], [N.A.] 6[R] and [N.A.] 7[R] covering Lot Nos. 946, 947 and 948, respectively, all in the name of "Don Mariano de San Pedro, Filipino, of legal age and widower."

Two years thereafter, on July 17, 1973, the Isabela Cultural Corporation, (formerly known as the Mission de la Compania de Jesus en Filipinas), herein-after referred to as Isabela, filed a motion to set aside the order of April 6, 1970. It mainly alleged that the order was null and void on ground of lack of jurisdiction of the court to entertain the petition because the order of February 5, 1970 setting the petition for hearing was published in the Manila Daily Bulletin and not in the Official Gazette, as prescribed under Section 13 of Rep. Act No. 26; that said order was likewise a patent nullity for having been issued without actual and personal notice upon Isabela, the actual possessor and registered owner of Lots Nos. 946, 947 and 948, as evidenced by the following transfer certificates of title, to wit:

"(1) Lot No. 946 of the Tala Estate which is embraced in and covered by Transfer Certificate of Title No. 19084 issued on March 19, 1931 in the name of Mission de la Compania de Jesus en Filipinas (now Isabela Cultural Corporation) by the office of the Register of Deeds of Rizal Province (now Register of Deeds of Caloocan City), containing an area of 249,550 sq. m. This Lot No. 946 which is covered by Transfer Certificate of Title No. 19084 was subdivided, at the instance of Mission de la Compania de Jesus en Filipinas, into Lots Nos. 946-A and 946-B for which Transfer Certificates of Title Nos. 45431 and 45432, respectively, were issued in the name of Mission de la Compania de Jesus en Filipinas, on February 12, 1973 by the Register of Deeds of Caloocan City;

"(2) Lot No. 947-New-C of the Tala Estate containing an area of 137,619 sq. m. and Lot No. 947-New-D of the Tala Estate containing an area of 73,673 sq. m. Both lots are embraced in and covered by Transfer Certificate of Title No. 23893 issued on July 25, 1933 in the name of Mission de la Compania de Jesus en Filipinas (now Isabela Cultural Corporation) by the Office of the Register of Deeds for the Province of Rizal (now Register of Deeds of Caloocan City); and

"(3) Lot No. 948-New-B of the Tala Estate which is embraced and covered by Transfer Certificate of Title No. 23895 issued on July 25, 1933 in the name of Mision de la Compania de Jesus en Filipinas (now Isabela Cultu-ral Corporation) by the Office of the Register of Deeds of Rizal (now Office of the Register of Deeds of Caloocan City), containing an area of 40,747 sq. m."

Hence, Isabela prayed that the order of April 6, 1970 be set aside and declared void and that the reconstituted titles issued in the name of Don Mariano de San Pedro as well as all other certificates of titles derived therefrom be likewise declared void and of no effect.

On September 4, 1973, petitioner Metropolitan Waterworks and Sewerage System, MWSS for short, a government corporation organized under Rep. Act No. 6234, filed an Omnibus Motion, praying for leave to intervene and for admission of its motion to set aside the order of April 6, 1970. MWSS claimed that for failure to publish the notice of hearing in the Official Gazette, as required by Section 13 of Rep. Act No. 26, the trial court did not acquire jurisdiction to hear the petition for reconstitution, much less to set aside the order of reconstitution; and that granting arguendo that the court did acquire jurisdiction over the petition, the reconstituted titles cannot prevail over the existing titles of MWSS, to wit: TCT No. 23892 and TCT No. 23894 issued in 1933, covering Lot Nos. 1161, 947-A, 947-B and Lot Nos. 1192 and 948-A, respectively, which are transfer from TCT Nos. 19085 and 19086 in the name of Mision de la Compania de Jesus en Filipinas, which in turn were derived from original certificate of title No. 543 issued in July 23, 1913, pursuant to Decree No. 4974 in G.L.R.O. Rec. No. 6563, originally covering Lot Nos. 946, 947 and 948 of the Tala Estate; that the Novaliches Watershed Reservation and Reservoir operated by MWSS, is located in portions of the said parcels of land; and that its inability to file the appropriate opposition to the petition was due to respondents' failure to serve the corresponding notice of hearing.

Private respondents opposed the above motions of Isabela and MWSS, advancing, in support thereof, that, while Rep. Act No. 26 provides that publication of the notice of hearing be made in the Official Gazette, the publication thereof in the Manila Daily Bulletin is authorized by Section 1 of Rep. Act 4569 and, therefore, constitutes substantial compliance with the law. Private respondents further alleged that the disputed order could no longer be disturbed as the same had become final and unappealable.

Acting on these motions, the trial court, this time presided by respondent Judge Nicanor Sison, issued the order of March 27, 1974, holding that the publication of the notice of hearing in the Manila Daily Bulletin did not comply with the mandatory requirement of Section 13 of Rep. Act 26 and, therefore, did not vest the trial court with jurisdiction to pass upon the petition for reconstitution. Accordingly, Judge Sison set aside the order of April 6, 1970 and declared cancelled and of no further force and effect reconstituted Transfer Certificates of Titles Nos. [N.A.] 5[R], [N.A.] 6[R] and [N.A.] 7[R] issued in the name of Don Mariano de San Pedro.

Private respondents moved for reconsideration of the order, but the same was denied. On August 19, 1974, they filed a notice of appeal and appeal bond.

On May 15, 1974, the other private respondents, namely: Eastcoast Development Enterprises, Inc., Constancio B. Maglana and Francisco Artigo filed a motion to intervene and to set aside the order of March 27, 1974. They claimed to have legal interest in the subject matter of the proceedings for being innocent purchasers for value and holders of transfer certificates of title derived from the reconstituted titles.

After submission of the opposition, reply and re-joinder, respondent Judge Sison issued the questioned order of September 4, 1975, reversing his previous order of March 27, 1974, as follows:

"WHEREFORE, finding the motion for intervention, etc., dated May 13, 1974, and the reply of June 20, 1974 by Eastcoast Development Enterprises, Inc., and Francisco G. Artigo, who are innocent purchasers for value with interest over the subject lands, to be well-taken, the same are granted and said movants, represented by

Attys. Constancio B. Maglana and Francisco G. Artigo, are granted leave to intervene in this case, and the Court hereby reconsiders and sets aside its order dated March 27, 1974, and declares the reconstituted titles as well as all the titles subsequently issued therefrom to be valid and binding in accordance with the provisions of Republic Act. No. 26. This has to be so because the order of this Court dated April 6, 1970 is valid and binding and the same has long become final and executory and complied with."[2]

He ruled that since the petition for reconstitution is a proceeding in rem, the publication of the notice of hearing, whether made in the Official Gazette or in a newspaper of general circulation, was sufficient compliance with the provisions of Section 13 of Rep. Act No. 26, in relation to Rep. Act 4569.

MWSS filed a motion for reconsideration of the above order; and upon denial thereof, it went to this Court on certiorari and prohibition.

We find the petition impressed with merit.

There is no dispute that the notice of hearing of the petition filed before the respondent court was never published in the Official Gazette, as required by Section 13 of Rep. Act 26, which reads:

"SEC. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the Municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the name of the occupants or persons in possession of the property, the owner of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest there-in must appear and file their claim or objection to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court."

The publication of the petition in two successive issues of the Official Gazette, the service of the notice of hearing to the adjoining owners and actual occupants of the land, as well as the posting of the notices in the main entrances of the provincial and municipal buildings where the property lies at least 30 days prior to the date of the hearing, as prescribed by Section 13 of the law, are mandatory and jurisdictional requisites.[3] In *Syjuco vs. PNB*,[4] this Court ruled that "if an order of reconstitution is issued without any previous publication, as required by law, particularly Section 13 of Rep. Act 26, such order of reconstitution is null and void and of no effect and, naturally, anything done under said order, is also void."

It is argued, however, that in as much as the Manila Daily Bulletin, where the notice of hearing was in fact published, had a wider circulation than the Official Gazette, such publication in said newspaper substantially complied with the requirement of the law, and that, moreover, publication in a newspaper of a general circulation, other than the Official Gazette, is authorized under Section 1 of Rep. Act 4569.[5]

We cannot sustain private respondents' view. Rep. Act 4269 applies only to judicial notices which the law requires to be published in a newspaper of general circulation. Section 13 of Rep. Act 26 specifies that publication of the notice of hearing in proceedings for judicial reconstitution of lost certificates of title should be made in the Official Gazette. It does not provide for any alternative medium or manner of publication.

A proceeding for judicial reconstitution of lost certificate of title partakes of the nature of a land registration and cadastral proceeding, where publication of the notice of initial hearing in the Official Gazette is required.[6] As heretofore stated, the publication in the manner provided for by Section 13 of Rep. Act 26 is compulsory and

jurisdictional; and unless said law is amended, the same must be strictly complied with.

Private respondent further maintains that the order of September 4, 1974, having become final and executory for failure of petitioners to appeal, can no longer be disturbed. As already pointed out, the orders of September 6, 1970 and of September 4, 1974 are void orders. In contemplation of law, they are non-existent. As aptly put in American Jurisprudence, "a void judgment is not entitled to the respect accorded to a valid judgment, but may be entirely disregarded or declared inoperative by any tribunal in which effect is sought to be given to it. It is attended by none of the consequences of a valid adjudication. It has no legal or binding effect or efficacy for any purpose or at any place. It cannot affect, impair or create rights. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce. All proceedings founded on the void judgment are themselves regarded as invalid. In other words, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgment. It, accordingly, leaves the parties litigants in the same position they were in before the trial." [7]

The certificates of title issued in the names of petitioners in 1931 and 1934 by the Register of Deeds of Rizal are as follows:

"TCT. No. 19084[8], now TCT No. 45431[9] and TCT No. 45432[10] covering Lot Nos. 946-New-A & 946-New-B, TCT No. 23893[11] and TCT No. 23895[12] covering Lot Nos. 946, 947-New-C and 947-New-D, and 948-New-B, respectively, all in the name of petitioner Isabela Cultural Corporation.

"TCT No. 23892[13] and TCT No. 23893[14] covering Lot Nos. 947-New-A, and 948-New-A, respectively, all in the name of petitioner Metropolitan Water District."

Considering that petitioners are holders of subsisting certificates of title which have not been cancelled either by judicial or administrative process, the questioned orders authorizing the issuance of reconstituted titles over the same lands must be struck down. Needless to state, the anomalous situation where two persons hold separate titles over the same lands cannot be countenanced. Relevant indeed to the case before Us is the following comment of Mr. Justice Teehankee in the case of *Alabang Development Corp. vs. Hon. Valenzuela*: [15]

"The first lesson to be drawn here is that courts must exercise the greatest caution in entertaining such petitions for reconstitution of allegedly lost certificates of title, particularly where the petitions are filed, as in this case, after an inexplicable delay of 25 years after the alleged loss. Furthermore, the courts must likewise make sure that indispensable parties, i.e., the actual owners and possessors of the lands involved, are duly served with actual and personal notice of the petition (not by mere general publication), particularly where the lands involved constitute prime developed commercial land ... The stability and indefeasibility of the Torrens System would have been greatly imperiled had the appellate court's judgment granting reconstitution prevailed, resulting in two holders of Torrens certificates over the same lands. We can take judicial notice of innumerable litigations and controversies that have been spawned by the reckless and hasty grant of such reconstitution of alleged lost or destroyed titles as well as the numerous purchasers who have been victimized only to find that the 'lands' purchased by them were covered by forged or fake titles or their areas simply 'expanded' through 'table surveys' with the cooperation of unscrupulous officials.

"The Court stresses once more that lands already covered by duly issued existing Torrens titles cannot be the subject of petitions for reconstitution of allegedly lost or destroyed titles filed by third parties without first securing by final judgment the cancellation of such existing titles. The courts simply have no jurisdiction over petitions by such third parties for reconstitution of allegedly lost or destroyed titles over lands that are already covered by duly issued subsisting titles in the names of their duly registered owners. The very concept of stability and indefeasibility of titles covered under the Torrens System registration rules out as anathema the issuance of two certificates of title over the same land to two different holders thereof. A fortiori, such proceedings for 'reconstitution' without actual notice to the duly registered owners and holders of Torrens

Titles to the land are null and void. Applicants, land officials and judges who disregard these basis and fundamental principles will be held duly accountable therefor."

WHEREFORE, the questioned orders of April 6, 1970 and September 4, 1974 are hereby annulled and set aside and reconstituted Transfer Certificates of Title Nos. [N.A.] 5[R], [N.A.] 6[R], and [N.A.] 7[R] issued pursuant to said orders, as well as all titles derived therefrom are hereby cancelled and declared null and void ab initio and without force and effect. Costs against private respondents.

SO ORDERED.

Makasiar, (Chairman), Concepcion, Jr., Guerrero, and Gutierrez, Jr., JJ., concur.

Aquino, J., see concurrence.

Abad Santos, J., on leave.

De Castro, J., on sick leave.

[1] pp. 79-81; Annex C, Petition.

[2] pp. 511-512, *ibid*.

[3] *Tahanan Development Corp. vs. Court of Appeals*, 118 SCRA 273; *Director of Lands vs. Court of Appeals*, 102 SCRA 381.

[4] 86 SCRA 320.

[5] "Section 1. -- All judicial notices, advertisements for public biddings, notices of auction sales and other similar notices or announcements required by law to be published in newspaper of general circulation in particular provinces and/or cities shall be published in newspaper or publications published, edited and printed in the same city and/or province where the requirements of general circulation applies; PROVIDED, that in the event there are no newspaper published in the locality, the same may be published in the newspaper and edited in the nearest city or province: PROVIDED FURTHER, that no newspaper which has not been regularly published for at least five years before the date of publication of the notices or announcements which may be assigned to it shall be qualified to publish said notices."

[6] Sections 31 & 32 of Act 496 and Sections 7 and 8 of Act 2259 [Cadastral Act].

[7] 31 Am. Jur., 91-92.

[8] p. 1000, Vol. III, Rollo.

[9] p. 1009, Vol. III, Rollo.

[10] p. 1010, Vol. III, Rollo.

[11] p. 1005, Vol. III, Rollo.

[12] p. 1007, Vol. III, Rollo.

[13] p. 1051, Vol. III, Rollo.

[14] p. 1053, Vol. III, Rollo.

[15] 116 SCRA 261.

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