

**PEREGRINA ASTUDILLO, PETITIONER-APPELLANT, VS. THE BOARD OF DIRECTORS OF PEOPLE'S HOMESITE AND HOUSING CORPORATION, RAMON P. MITRA, SALUD O. MITRA, AND REGISTER OF DEEDS, QUEZON...***G.R. No. L-28066. September 22, 1976*

Ponente: AQUINO, J.

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Peregrina Astudillo appealed from the "resolution" dated April 18, 1967 of the Court of First Instance of Rizal, Quezon City Branch V, granting the motion for summary judgment filed by Ramon P. Mitra and dismissing her petition for certiorari and mandamus (Civil Case No. Q-8741).

According to the pleadings of respondents Mitra and the People's Homesite and Housing Corporation (PHHC)[\*], Mitra on December 28, 1957 applied, in behalf of his minor son, Ramon Mitra Ocampo, for the purchase of Lot 16, Block E-155 of the East Avenue Subdivision of the PHHC in Piñahan, Quezon City.

His application was approved on January 3, 1958. He made a downpayment of P840, an amount equivalent to ten per-cent of the price of the lot. On September 9, 1961 the PHHC and Mitra executed a contract of conditional sale. After Mitra had paid in full the price, which totalled more than nine thousand pesos, a final deed of sale was executed in his favor on February 18, 1965. Transfer Certificate of Title No. 89875 was issued to him on March 1, 1965.

The lot in question is actually in the possession of Pere-grina Astudillo. She constructed thereon a residential house (a shanty, according to Mitra). She admits that she has been squat-ting on the said lot "uninterruptedly since 1957 up to the present" (p. 52, Record). She filed with the administrative investigating committee of the PHHC a request dated February 24, 1963, praying for the cancellation of the award of Lot 16 to Congressman Mitra and asking the committee to recommend that it be re-awarded to her. No action was taken on that request.

On May 3, 1965 Peregrina filed in the lower court her aforementioned petition against the PHHC board of directors, the register of deeds of Quezon City and the spouses Ramon P. Mitra and Salud O. Mitra. She questioned the legality of the award of Lot 16 to Mitra. She asked that Lot 16 be sold to her.

After the respondents had filed their answers, the Mitra spouses filed a verified motion for summary judgment. They assumed that there was no genuine issue as to any material fact. Peregrina Astudillo opposed the motion. The parties submitted memoranda.

The lower court treated the motion for summary judgment as a motion to dismiss. It dismissed Peregrina's petition on the grounds that she is a mala fide squatter and that the sale of Lot 16 to Mitra cannot be assailed by means of certiorari and mandamus. Peregrina appealed to this Court.

Her four assignments of error raise questions of law. She contends that the lower court erred in holding that

certiorari and mandamus do not lie in this case and that she has no right to question the award to Mitra, and in not holding that the award of Lot 16 to him was in contravention of the Anti-Graft and Corrupt Practices Law and of the constitutional provision that a Senator or Representative should not directly or indirectly be financially interested in any contract with the government or any subdivision or instrumentality thereof during his term of office.

In the ultimate analysis the issue is whether Peregrina Astudillo has a cause of action to annul the sale of Lot 16 to Mitra and to compel the PHHC board to award that lot to her.

We hold that she has no cause of action to impugn the award to Mitra and to require that she be allowed to purchase the lot. As a squatter, she has no possessory rights over Lot 16. In the eyes of the law, the award to Mitra did not prejudice her since she was bereft of any rights over the said lot which could have been impaired by that award (*Bañez vs. Court of Appeals*, L-30351, September 11, 1974, 59 SCRA 15, 22).

The record does not show, and Peregrina does not claim, that she is a member of the Piñahan Homeowners Association some of whose members are "deserving squatters" (*Kempis vs. Gonzales*, L-31701, October 31, 1974, 60 SCRA 439).

In the familiar language of procedure, she was not entitled to sue Mitra and the PHHC for the enforcement or protection of a right, or the prevention of a wrong. Those respondents did not commit any delict or wrong in violation of her rights because, in the first place, she has no right to the lot. Not being principally or subsidiarily bound in the contract of sale between Mitra and the PHHC, she is not entitled to ask for its annulment (Art. 1397, Civil Code).

Peregrina invokes the PHHC charter (erroneously referred to as section 11 of Commonwealth Act No. 648) which provides that the PHHC should acquire buildings so as to provide "decent housing for those who may be unable otherwise to provide themselves therewith" and that it should acquire large estates for their resale to bona fide occupants.

Those provisions do not sustain her action in this case. They do not justify her act of squatting on a government-owned lot and then demanding that the lot be sold to her because she does not yet own a residential lot and house. She is not a bona fide occupant of Lot 16.

The State is committed to promote social justice and to maintain adequate social services in the field of housing (Secs. 6 and 7, Art. II, New Constitution). But the State's solicitude for the destitute and the have-nots does not mean that it should tolerate usurpations of property, public or private.

"In carrying out its social readjustment policies, the government could not simply lay aside moral standards, and aim to favor usurpers, squatters, and intruders, unmindful of the lawful and unlawful origin and character of their occupancy. Such a policy would perpetuate conflicts instead of attaining their just solution" (*Bernardo vs. Bernardo*, 96 Phil. 202, 206).

Indeed, the government has enunciated a militant policy against squatters. Thus, Letter of Instruction No. 19 dated October 2, 1972 orders city and district engineers "to remove all illegal constructions, including buildings x x x and those built without permits on public or private property" and provides for the relocation of squatters (68 O.G. 7962. See Letter of Instruction No. 19-A). As noted by Justice Sanchez, "since the last global war, squatting on another's property in this country has become a wide-spread vice" (*City of Manila vs. Garcia*, L-26053, February 21, 1967, 19 SCRA 413, 418).

The lower court did not err in holding that Peregrina Astudillo cannot use the special civil actions of certiorari and

mandamus to secure a judicial review of the award of Lot 16 to Mitra. Rule 65 of the Rules of Court provides:

"SECTION 1. Petition for certiorari. - When any tribunal, board, or officer exercising judicial functions, has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings, as the law requires, of such tribunal, board or officer.

"The petition shall be accompanied by a certified true copy of the judgment or order subject thereof, together with copies of all pleadings and documents relevant and pertinent thereto."

"SEC. 3. Petition for mandamus. - When any tribunal, corporation, board, 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, the person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the defendant, immediately or at some other specified time, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the defendant."

Respondent PHHC board is not the board contemplated in section 1 of Rule 65. It does not exercise judicial functions. The award being questioned was a routine corporate act that was within the board's competence. No jurisdictional issue was involved in that award. Certiorari lies only for the correction of jurisdictional errors (Gov't of the P. I. vs. Judge of 1st Instance of Iloilo, 34 Phil. 157, 159).

Nor is the relief sought by Peregrina Astudillo, which is to compel the PHHC board to cancel the award of Lot 16 to Mitra and to resell it to her, a right that can be enforced by mandamus. What she wants is to force the PHHC to execute a contract of sale in her favor. That is not within the purview of the writ of mandamus.

Thus, it was held that "the writ of mandamus is not an appropriate or even admissible remedy to enforce the performance of a private contract which has not been fully performed by either party" (Quioque vs. Romualdez, 46 Phil. 337). In Jacinto vs. Director of Lands, 49 Phil. 853, a petition for a writ of mandamus to compel the Director of Lands to execute a deed of conveyance for certain lots in favor of the petitioner was denied. Generally, title to property cannot be litigated in a mandamus proceeding (City of Manila vs. Posadas, 48 Phil. 309, 337).

It is not a ministerial duty of the PHHC board to award Lot 16 to Peregrina. Anyway, it has already been shown that as a squatter she is not clothed with any right to Lot 16 that may be enforced in a court of justice.

The PHHC board completely ignored the alleged demands of Peregrina for the purchase of Lot 16. It did not render any decision against her. Its inaction cannot be assailed by certiorari or mandamus.

Peregrina's other assignment of error is that the award of Lot 16 to Congressman Mitra was a violation of section 3(h) of the Anti-Graft and Corrupt Practices Law and of section 17, Article VI of the 1935 Constitution, now section 11, Article VIII of the new Constitution.

On the other hand, Mitra contends that the PHHC performs proprietary functions. He observed that the following high-ranking officials were awarded PHHC lots: Felixberto Serrano, Dominador Aytona, Manuel Lim, Fernando Lopez, Pacita M. Gonzales, Genaro Magsaysay, Daniel Romualdez, Felipe A. Abrigo, Bartolome Cabangbang, Juan Duran, Manuel Enverga, Angel Fernandez, Jose Nuguid, Antonio de Pio, Lorenzo Teves, Faustino Tobia,

Pedro Trono, Marcelino Veloso and Valeriano Yancha.

We are of the opinion that that assignment of error need not be resolved in this case. Having shown that Peregrina has no cause of action to assail the award of Lot 16 to Mitra, it follows that in this particular case she cannot assail that award by invoking the provisions of the Anti-Graft and Corrupt Practices Law and the Constitution. This is not the proper forum for the ventilation of that question. (See Commonwealth Act No. 626; Hernandez vs. Albano, 112 Phil. 506; Solidum and Concepcion, Jr. vs. Hernandez, 117 Phil. 335).

WHEREFORE , the lower court's order of dismissal is affirmed. No costs.

**SO ORDERED.**

Barredo, Antonio, and Concepcion, Jr., JJ., concur.

Fernando, J., (Chairman), in the result.

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[\*] The PHHC was merged with the National Housing Com-mission, which was created under Commonwealth Act No. 648 (Sec. 14, Executive Order No. 93 dated October 4, 1947; 6 Philip-pine Annotated Laws 27-28). Section 5 of Presidential Decree No. 757 dated July 31, 1975 dissolved the PHHC and created the National Housing Authority.

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