

PABLO NIDOY, PETITIONER, VS. COURT OF APPEALS AND CHARLES ANG, RESPONDENTS.

G.R. No. 105017. September 30, 1992

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This petition for review on certiorari seeks to determine whether the benefits extended by P.D. 1517, as amended, otherwise known as the "Urban Land Reform Act", may be availed of by an apartment dweller occupying the premises for more than twenty-five (25) years.

Petitioner has been the lessee since 1965 of one (1) unit of an apartment building subsequently sold, together with the land on which it stands, situated in Malate, Manila, to private respondent Charles Ang. The property was proclaimed as within an Area for Priority Development.

On 16 May 1990, private respondent commenced an action against petitioner for unlawful detainer before the Metropolitan Trial Court of Manila (MeTC) alleging that the lease contract on the subject premises expired on 31 December 1989, and that petitioner has not been paying his monthly rentals since then. In his answer, petitioner countered that the filing of the instant action was premature, that there was in fact payment of monthly rentals, and that the deed of sale executed on the apartment building was null and void, being in violation of the "Urban Land Reform Act".

On 10 October 1990, the MeTC ruled in favor of private respondent and ordered petitioner to vacate and surrender the leased premises, and to pay the back rentals from January 1990 up to the time of surrender, as well as attorney's fees. The decision of the MeTC was affirmed by the Regional Trial Court and the Court of Appeals on 6 February 1991 and on 5 June 1992, respectively.

Petitioner elevated his case to this Court vigorously contending that the notices of termination of lease sent by private respondent before the execution of the deed of absolute sale on 29 December 1989 were but a "meaningless gesture" since the latter could not yet exercise any right of ownership over the property then.

Further, petitioner assails the failure of the courts a quo to apply the provisions of Sec. 6, P.D. 1517, as amended. He asseverates that being the lessee of the premises, which are "within the coverage of the 245 proclaimed Areas for Priority Development," for the past twenty-five (25) years,[1] he enjoys the right of first refusal to purchase the same at a reasonable price within a reasonable time. Thus, it is his contention that inasmuch as the vendor-lessor failed to offer to sell the property to him first as lessee, the deed of sale executed in favor of private respondent is null and void, and that even if he did not have any right of first refusal, he nevertheless could not be evicted under the "Urban Land Reform Act."

On 29 June 1992, We denied the instant petition for non-compliance with Circular No. 28-91 requiring a certification against forum-shopping.

Petitioner manifests, however, that he has in fact attested under oath, in his motion for extension of time as well as

in his petition, that "there is no pending other suit between the same parties over the same issue, civil, criminal, or otherwise".[2] He submits that this sworn representation is in substantial compliance with Circular No. 28-91 and, correspondingly, prays for the reinstatement of his petition for review.[3]

A careful examination of the records, particularly paragraph 11 of the petition, confirms this allegation,[4] hence, We reinstate the petition.

However, We are constrained to deny the petition just the same.

First. On 12 September 1989, private respondent tendered half of the agreed purchase price of P1.5 million as consideration of the "Contract to Buy and Sell". The amount was never deemed an earnest money; it was part of the purchase price. Hence, private respondent had every right to inform petitioner of his intention to terminate the lease contract upon its expiration on 31 December 1989. This, even if the purchase price was not yet fully paid. He only had to pay the balance in order to consolidate his ownership over the property, which he was able to do on 29 December 1989. Consequently, the service of the notices of termination by respondent on 17 October 1989 and 21 December 1989 on petitioner was effective and with authority.

Second. Even assuming arguendo that service of the notices was defective, still it is undisputed, as found by the courts below, that petitioner was remiss in paying his monthly rentals since January 1990. The lease contract having expired and petitioner having defaulted in the payment of his lease rentals, quite obviously, his right to occupy the subject premises must cease. Thus, when respondent asked petitioner to vacate, pointing out his failure to pay as well as the expiration of the lease contract, petitioner was already a deforciant or an illegal occupant of the leased apartment.[5] Undoubtedly, private respondent complied with the jurisdictional requirements for an action for unlawful detainer to prosper and thus seek ejectment through judicial process.

Third. Section 6 of P.D. 1517, as amended, is inapplicable in the case before Us. It reads -

"Section 6. Land Tenancy in Urban Land Reform Areas. Within the Urban Zones, legitimate tenants who have resided on the land for ten years or more who have built their homes on the land and residents who have legally occupied the lands by contract continuously for the last ten years shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same within a reasonable time and at reasonable prices, under terms and conditions to be determined by the Urban Zone Expropriation and Land Management Committee created by Section 8 of this Decree" (underscoring ours).

Clearly, the right of first refusal applies only to tenants who have resided for ten (10) years or more on the leased land declared as within the Urban Land Reform Zone, and who have built their homes on that land. It does not apply to apartment dwellers.[6] Petitioner, who rents one of the units in the apartment building, is merely an apartment dweller although the land is within the Urban Land Reform Zone. Moreover, the right of first refusal may only be exercised by the legitimate tenants, and petitioner having ceased to be a bona fide tenant cannot avail himself of the benefits of P.D. 1517, as amended.

Fourth. Petitioner's contention that he cannot be evicted or dispossessed of the leased land even if he does not enjoy the right of first refusal under P.D. 2016, the amendatory decree of the "Urban Land Reform Act", is not well taken. True, Sec. 2 thereof provides that "no tenant or occupant family, residing for ten years or more x x x in land proclaimed as Areas for Priority Development x x x shall be evicted from the land or otherwise dispossessed." However, the benefits of this amendatory decree extend only to legitimate tenants who have been leasing the land on which they have constructed their homes for ten (10) years or more from 11 June 1978 (date of effectivity of P.D. 1517) in land proclaimed as an Area for Priority Development; it does not extend to apartment dwellers such as herein petitioner.

The rationale for the rule on non-eviction is to preclude unscrupulous landowners from demanding a steep price for the land from their tenants with the view of evicting the latter should they fail to exercise their right of first refusal. P.D. 2016 seeks to prevent the landowners from resorting to this ploy. The "Whereas Clauses" of the law are enlightening -

x x x x

"WHEREAS, notwithstanding the above-mentioned presidential issuances relating to the institution of urban land reform and its implementing machinery, resident families in Areas for Priority Development or Urban Land Reform Zones are being evicted from such land in violation of Section 6 of the Urban Land Reform Law which provides that qualified families within Urban Land Reform Zone 'shall not be dispossessed of the land and shall be allowed the right of first refusal to purchase the same;'

"WHEREAS, landowners of the above-cited land are able to go around Section 6 of the Urban Land Reform Law by offering to sell the land to occupant families at a very high price which is beyond the occupant's capacity to pay and subsequently evicting them for failure to exercise their option to buy the said land thus rendering the Urban Land Reform Law inoperative and of no consequence."

IN VIEW OF THE FOREGOING, the petition for review on certiorari is DENIED. Costs against petitioner.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.

[1] Annex "G", Petition.

[2] Motion for Reconsideration, p. 1.

[3] Id, p. 2.

[4] Petition, p. 3.

[5] See *Joya v. Court of Appeals*, G.R. No. 89734, 27 February 1991; 194 SCRA 565.

[6] *Nieves v. Court of Appeals*, G.R. No. 85184, 3 June 1991; 198 SCRA 63.

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