

ALBERTO MAGLASANG, JR., PETITIONER, VS. HON. MERCEDES GOZO DADOLE, PRESIDING JUDGE, REGIONAL TRIAL COURT, CEBU, BRANCH 28, MANDAUE CITY, AND CONSUELO Q. PABROA, RESPONDENTS.

G.R. No. 116417. October 18, 2000

Ponente: PARDO, J.

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PARDO, J.:

The case under consideration is a special civil action for certiorari assailing the order of the Regional Trial Court, Cebu, Branch 28, Mandaue City[1] approving the commissioner's report and ordering the demolition of a structure constructed by Alberto Maglasang, Jr., for obstructing the road right of way.

On July 15, 1988, Alberto Maglasang, Jr. filed with the Regional Trial Court, Cebu, Mandaue City a petition for the cancellation of the inscription of a permanent lien of a right of way on Transfer Certificate of Title No. T-62901 of the Office of the Register of Deeds of the Province of Cebu in the name of the petitioner, covering a parcel of land situated in Consolacion, Cebu.[2]

On September 28, 1988, Consuelo Q. Pabroa filed an opposition, alleging that she owned one of the lots adjoining petitioner's land and that the permanent lien of a right of way should not be cancelled because the road on which a portion of petitioner's property extends is used by the adjoining landowners as the only outlet to the national highway.[3]

After conducting several hearings, the trial court noted that the only access to the national highway was through the road right of way located on the property of petitioner Alberto Maglasang, Jr. and spouses Jose M. Quiapo and Sinforosa Flores. Thus, on October 2, 1989, the trial court denied the petition for cancellation of lien.[4]

Upon appeal, the Court of Appeals affirmed the decision of the trial court.[5] Not satisfied, Alberto Maglasang, Jr. filed a petition for review with this Court.[6] On August 26, 1991, the Court denied the petition.[7] On October 4, 1991, petitioner filed a motion for reconsideration.[8] However, on October 21, 1991, the Court denied the motion for reconsideration.[9] On November 13, 1991, the decision became final.[10]

On February 12, 1993, Consuelo Q. Pabroa filed with the trial court a motion for execution. On March 2, 1993, she filed another motion for execution with prayer for immediate demolition of illegal structures.[11] Respondent Pabroa alleged that while awaiting the enforcement of the writ of execution of the order dated October 2, 1989, petitioner Maglasang built a concrete hollow block fence obstructing the two-meter permanent right of way.

The trial court did not rule on the motion for execution, but instead, ordered the appointment of a commissioner to conduct an ocular inspection of the land in question. By agreement of the parties, the trial court appointed its clerk of court, Atty. Bonifacio Go Virtudes, to perform the task. Subsequently, Atty. Virtudes submitted a commissioner's report dated March 18, 1993.[12] However, petitioner interposed numerous objections to the report.

Consequently, on April 14, 1993, the trial court ordered the appointment of a geodetic engineer to conduct a relocation survey of the land, subject of a right of way in accordance with the order of the trial court dated October 2, 1989.[13]

On November 23, 1993, geodetic engineer Cesar V. Tecson submitted a commissioner's report.[14] On December 6, 1993, petitioner filed an opposition to the report.[15]

On January 7, 1994, the trial court ordered geodetic engineer Tecson to conduct another relocation survey of the land.

On January 24, 1994, Engineer Tecson submitted his report, adopting the findings of the first survey.[16] Consequently, on February 4, 1994, petitioner filed a reiteration of his opposition, alleging that the surveyor was biased and that an approval of the commissioner's report would be tantamount to amending the substance of the original order which had long become final and irreversible.[17]

On July 22, 1994, the trial court issued the questioned order, approving the commissioner's report. The order stated:

"Finally, since per findings of the commissioner as contained in his reports dated November 23, 1993 and January 24, 1994, a structure has been constructed by the petitioner which has in a way obstructed the subject road right of way, the same must have (sic) to be demolished in order that the road right of way be established completely.

"WHEREFORE, foregoing premises considered, Order is hereby issued:

"1) Approving the commissioner's report dated November 23, 1993 and the reiteration on the commissioner's report dated January 24, 1994;

"2) Ordering the petitioner to reimburse oppositor's share in the commissioner's fee in the amount of P1,750.00 per court's order dated April 14, 1992; and,

"3) Ordering the petitioner to demolish the structure which he has constructed on the road right of way within ten (10) days from receipt of this order; otherwise, after the lapse of ten (10) days without him complying with this order, the said structure will be demolished by the Sheriff of this court at petitioner's expense.

"SO ORDERED.

"Given in chamber this 22nd day of July, 1994, in the City of Mandaue, Philippines.

"(sgd.)MERCEDES GOZO DADOLE "Judge"[18]

Hence, this petition, alleging that the trial court committed a grave abuse of discretion when it issued the order dated July 22, 1994, because it modified a previous final order dated October 2, 1989.[19]

On August 12, 1994, the Court required respondents to file a comment and enjoined the trial court from enforcing the order dated July 22, 1994, in LRC Rec. No. 9462.[20]

On August 22, 1994, private respondent filed her comment, maintaining that petitioner constructed a portion of his apartment house and concrete hollow block fence on the road which obstructed the right of way. Thus, the illegal structures must be demolished. Private respondent further prayed that the temporary restraining order against the enforcement of the writ of execution be lifted.[21]

On September 19, 1994, the Court resolved to consolidate the present action with G. R. No. 101032, where this Court affirmed the decision of the lower courts in denying the petition for cancellation of lien of a right of

way.[22]

We find that the trial court did not gravely abuse its discretion in issuing the order dated July 22, 1994.

An act of a court or tribunal may be considered to have been done in grave abuse of discretion when the same was performed in a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[23]

It is undisputed that an easement of a right of way had been constituted in a prior proceeding. The trial court order dated October 2, 1989, established the need for a right of way to be maintained on petitioner's property. However, in order to maintain the lien of a right of way, the trial court considered the possibility that structures may be built to obstruct the right of way.

It was necessary to conduct an ocular inspection to determine if such right of way had been rendered ineffective by petitioner's acts. The trial court went through great lengths appointing commissioners to conduct surveys of the land to determine whether petitioner encroached on the subject right of way. As a result of the ocular inspections made on the property, it was revealed that a portion of petitioner's property obstructed the right of way.

Thus, the challenged order did not modify the previous order, but actually implemented the order of the trial court dated October 2, 1989. The order for demolition was, therefore, incidental to the execution of the order dated October 2, 1989.

WHEREFORE, the Court DISMISSES the petition, for lack of merit. The Court sets aside the resolution dated August 15, 1994 enjoining the trial court from enforcing the order dated July 22, 1994, in LRC Rec. No. 9462.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

[1] In LRC Rec. No. 9462, Judge Mercedes Gozo-Dadole, presiding.

[2] Petition, Annex "B", Rollo, G. R. No. 116417, pp. 15-17.

[3] Comment, Rollo, G. R. No. 116417, pp. 36-38.

[4] Petition, Annex "C", Rollo, G. R. No. 116417, pp., 18-22.

[5] CA-G. R. CV No. 24589, Decision promulgated on July 9, 1991, Rollo, G. R. No. 101032, p. 10.

[6] Docketed as G. R. No. 101032, filed on August 12, 1991.

[7] Rollo, G. R. No. 101032, p. 16.

[8] Ibid., pp. 17-19.

[9] Ibid., p. 24.

[10] Entry of Judgment dated November 13, 1991, Rollo, G. R. No. 101032, p. 28.

- [11] Comment, Exh. "2", Rollo, G. R. No. 116417, pp. 44-45.
- [12] Comment, Exh. "3", Rollo, G. R. No. 116417, p. 46.
- [13] Comment, Exh. "4", Rollo, G. R. No. 116417, p. 47.
- [14] Comment, Exh. "5", Rollo, G. R. No. 116417, p. 48.
- [15] Petition, Annex "E", Rollo, G. R. No. 116417, p. 25-27.
- [16] Petition, Annex "F", Rollo, G. R. No. 116417, p. 28.
- [17] Manifestation, Annex "G", Rollo, G. R. No. 116417, p. 68.
- [18] Rollo, G. R. No. 116417, pp. 29-31.
- [19] Petition filed on August 10, 1994, Rollo, G. R. No. 116417, pp. 2-13.
- [20] Resolution, Rollo, G. R. No. 116417, pp. 32-33.
- [21] Comment, Rollo, G. R. No. 116417, pp. 36-38.
- [22] Rollo, G. R. No. 116417, p. 99.
- [23] *Miranda v. Abaya*, 311 SCRA 617, 631 (1999); *People v. Webb*, 312 SCRA 573, 591 (1999).

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