

**MAGDALITA Y. TANG, BENITO YAO, KUYSEN GO, ROBIN LIM TAN,
WILBERT TAN ONG, APOLONIO CRUZ HILARIO, ARNEL CHUA,
AVELINO TAN, JR., AUGUSTO UY, ANABELLE LIM, WILLIAM
PENALOSA, MARTIN...**

G.R. No. 117204. February 11, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Before us is a petition seeking the reversal of the Resolutions of the Court of Appeals, dated 11 February 1994 and 23 August 1994, which denied due course to petitioners' special civil action for certiorari.

The facts of this case are as follows:

Respondent Estate of the Spouses Toribio Teodoro and Marta Teodoro is presently pending settlement before the Regional Trial Court of Caloocan City, Branch 120. The court-appointed administrator of the said estate is respondent Prudencio Teodoro. Included in the inventory of properties of the estate is a 1,704 square meter parcel of land designated as Lot No. 214-A, covered by Transfer Certificate of Title ("TCT") No. (28232) 12039. In 1991, the Republic of the Philippines expropriated 337 square meters of the said lot for its C-3 Circumferential Road Project.[1] Thus, Lot 214-A was subdivided into Lot 214-A-1, covered by TCT No. 237325 and titled under the name of the Republic of the Philippines,[2] and Lot 214-A-2, covered by TCT No. 237325 and titled under the name of respondent estate.[3]

Subsequently, respondent administrator offered to sell Lot 214-A-2 to the City Government of Caloocan in order to have funds to finally settle the estate. However, the latter, through the City Engineer, public respondent Luciano R. Sarne, Jr., informed respondent administrator that the city government was not interested.[4]

Since the estate was already in debt due to accruing interests from estate taxes, at the rate of P1,200 per day, respondent administrator petitioned the probate court for an authority to mortgage or sell Lot 214-A-2. This was readily granted by the probate court in its Order dated 1 June 1992.[5] However, respondent administrator found it difficult to sell the said lot. As a remedy, he sought to sub-divide the lot into two (2) smaller lots. Thus, after obtaining a duly approved plan from the Bureau of Land Management, Lot 214-A-2 was sub-divided into Lot 214-A-2-A, covered by TCT No. 248052,[6] and Lot 214-A-2-B, covered by TCT No. 248053.[7]

Respondent Administrator then applied with the Caloocan City Engineer for a permit to fence the two lots. The City Engineer endorsed the application to the City Legal Officer, Zosimo Santiago, for appropriate action. The City Legal Officer then called a conference between respondent administrator and the owners of the properties adjoining the subject lots, the petitioners in the instant case. During the conference, petitioners opposed the issuance of the fencing permit on the claim that the subject lots are street lots and, as such, its fencing would mean the closure of their access to public roads. On 9 November 1992, the City Legal Officer, after concluding that the subject lots are street lots, recommended the denial of the fencing permit to the City Engineer.[8]

Accordingly, the City Engineer denied respondent administrator's application for a fencing permit.

This predicament prompted respondent administrator to file a petition before the probate court to order the Caloocan City Engineer to issue the fencing permit for the subject lots. After hearing, the probate court issued an Order, dated 30 June 1993, granting the petition. The said order reads:

Worthy of consideration is the respondent's ground for refusal or rejection of petitioner's application for the fencing permit in question, based on the Answer, Special and Affirmative Defenses, to the effect that:

"7. x x x the subject property intended to be fenced are street lots and part and parcel of a road known as J. Teodoro Street between 4th and 5th Avenues situated at Grace Park, Kalookan City;

While it is apparent on the face of the title of the subject properties (which is TCT No. 248052 and 248053) that the properties are ordinary private lots, respondent found out after investigation that in the mother title from which TCT No. 248052 and 248053 was derived and all earlier titles affecting the subject properties, Lot 214-A-2-A and Lot 214-A-2-B are delineated as street lots. Copies of the TCT No. 237326 and 28232 are hereto attached as Annex "A" and "B";"

However, a second hard look at the two aforementioned Lots 214-A-2-A and 214-A-2-B, covered by TCT No. 248052 and TCT No. 248053, respectively, evidently are NOT described as Street (sic) lots. Instead, said Lot 214-A-2-A is described merely as "A parcel of land (Lot 214-A-2-A of the subd. plan Psd-007501-002231-D, being a portion of Lot 214-A-2, Psd-13-014307;" and likewise, said Lot 214-A-2-B is not denominated as "Street lot".

Even the restrictions implicitly annotated in said titles do NOT include any prohibition against the use, possession or appropriation of the lots in question. Moreover, said restrictions have been already deleted as per Waiver of Restrictions now annotated in said titles (Exhibit "C-1") previously imposed by the Philippine Realty Corporation, vendor of the same properties to the petitioner in said titles.

Accordingly, said Lot 214-A-2-A, which contains an area of 684 square meters, registered under TCT No. 248052, remains undiminished by the so-called street lots appearing in TCT N. 237326.

x x x

But what appears as the most decisive and pervasive matter for consideration is the fact that TCT No. 248052, which is a transfer from TCT No. 237326, NOT only failed to carry over the description of the street lot for Lot 214-A-2-A but, in fact, CANCELLED said TCT No. 237326.

x x x

All better put, the inscription of "street lot" in question is stale, without legal force and effect.

x x x

The argument in the Answer that the petition is premature for failure to exhaust all administrative remedies, is not persuasive since the act complained of, considered a ministerial duty under the present circumstances, is clearly arbitrary, unjustified and illegal.

Finally, the letter of April 18, 1991 by respondent to Mr. Prudencio J. Teodoro (Exhibit "E"), which states:

"In response to your letter dated November 29, 1990, we wish to inform you that the city government of Kalookan is no longer interested in acquiring the parcel of land situated between the 4th and 5th Avenues, this city, which is under T.C.T. No. (28232) 12039."

is self-defeating and evidently affects the credibility of respondent's rejection or refusal of petitioner's application

for permit.

WHEREFORE, the petition is hereby GRANTED.

The respondent is hereby ordered to issue the fencing permit applied for by the petitioner administrator of the estate of the spouses Toribio Teodoro and Marta J. Teodoro.

SO ORDERED.[9]

On 2 July 1993, the City Engineer filed a Notice of Appeal questioning the order of the probate court.[10] However, on 12 October 1993, he withdrew the said appeal[11] and, consequently, issued the fencing permit on 15 November 1993.[12]

When petitioner Magdalita Tang, a neighboring lot owner, noticed that the subject lots were already being fenced, she questioned the 30 June 1993 Order of the probate court by filing a special civil action for certiorari with prayer for preliminary injunction before the Court of Appeals. After the Court of Appeals granted her a temporary restraining order, the other petitioners, also neighboring lot owners, joined her cause in opposing the fencing of the subject lots. Accordingly, the petition was amended on 20 December 1993 to include the additional petitioners.[13] On 11 February 1994, the Court of Appeals issued a resolution denying due course to the said petition on the ground that certiorari was not the proper remedy for petitioners to annul and set aside the order of the lower court. The pertinent portion reads:

Now let us proceed to deliberate and consider the main petition for certiorari which seeks to annul and set aside the order of the Regional Trial Court dated June 30, 1993 commanding the City Engineer to issue the fencing permit for private respondent.

Petitioners contend that respondent Court acted with grave abuse of discretion amounting to or in excess of jurisdiction when it ordered the respondent City Engineer to issue the questioned fencing permit in contravention of Section 50 of P. D. 1529.

Basically, the provisions of the Rules of Court allow an aggrieved party to take a cause or apply for relief to the Appellate Court either of two (2) ways: appeal or certiorari. An appeal brings up for review errors of judgment committed by a Court with jurisdiction over the subject of the suit. On the other hand, well-settled is the rule that certiorari is for correction of errors of jurisdiction only or for grave abuse of discretion amounting to lack or in excess of jurisdiction (*Silverio vs. CA*, 141 SCRA 527).

In the case at bar, there is no dispute that the lower court had jurisdiction or did not gravely abuse its discretion when it issued the order, commending the City Engineer to issue the fence permit. At least, there was no showing to that effect. While a preliminary injunction can be questioned by a petition for certiorari under Rule 65 of the Rules of Court, a judgment granting permanent injunction should be the subject of a timely appeal (*Casilan vs. Ybanez*, 6 SCRA 590). For certiorari to lie, there must be a capricious, arbitrary and whimsical exercise of power which is very antithesis of judicial prerogatives founded on law and traditions (*Imutan vs. CA*, 102 SCRA 286). Normally, certiorari does not lie if appeal is the proper remedy (*Bacabac vs. Delfin*, 1 SCRA 1194). Errors of judgment are not correctible by certiorari (*Commodity Financing Co, Inc. vs. Jimenez*, 91 SCRA 57). If The petitioners did not agree with the order complained of, the respondent City Engineer could have appealed (*Lopez vs. Alvendia*, 12 SCRA 634). In the instant case, there was notice of appeal filed by the City Engineer, but he withdrew said appeal probably to allow petitioner to file the instant petition for certiorari.

x x x

FINALLY, on July 2, 1993, respondent City Engineer filed a Notice of Appeal against the decision of the RTC dated June 30, 1993, but withdrew said appeal on October 12, 1993, and instead, the instant petition for

certiorari with prayer for preliminary injunction was filed by petitioner on November 29, 1993. Certainly, certiorari is not appropriate in this case, since appeal previously taken by the City Engineer could have been the proper remedy (Jose vs. Zulueta, 2 SCRA 574).

ACCORDINGLY, in the light of the foregoing disquisitions, the petition for certiorari with prayer for preliminary injunction CANNOT BE GIVEN DUE COURSE as it is hereby DISMISSED for lack of merit. Consequently, the prayer for preliminary injunction is likewise DENIED.

SO ORDERED.[14]

Petitioners filed a motion for reconsideration but the same was denied by the Court of Appeals in its Resolution dated 23 August 1994.

Hence, the present petition where the following assignment of errors are raised:

I

THE COURT OF APPEALS COMMITTED GROSS ERROR IN DISMISSING THE PETITION FOR CERTIORARI, THE RESPONDENT RTC OF CALOOCAN CITY HAVING NO JURISDICTION TO ENTERTAIN THE PETITION FOR ISSUANCE OF A FENCING PERMIT, PRIVATE RESPONDENT NOT HAVING EXHAUSTED HIS ADMINISTRATIVE REMEDY.

II

THE COURT OF APPEALS LIKEWISE COMMITTED A GRAVE ERROR IN DISMISSING THE PETITION, RESPONDENT RTC OF CALOOCAN CITY HAVING COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION IN ORDERING THE CITY ENGINEER TO ISSUE A FENCING PERMIT, SAID RESPONDENT RTC MERELY ACTING AS A PROBATE COURT WITH LIMITED JURISDICTION.

III

THE COURT OF APPEALS AGAIN COMMITTED GROSS ERROR IN DISMISSING THE PETITION, THE RESPONDENT RTC OF CALOOCAN CITY HAVING ORDERED THE ISSUANCE OF A FENCING PERMIT WITHOUT DUE COURSE, THE AFFECTED NEIGHBORING TITLE OWNERS NOT HAVING BEEN NOTIFIED NOR HEARD.

IV

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT APPEAL NOT CERTIORARI IS THE PROPER REMEDY.[15]

We shall first discuss the last assignment of error since the determination of this crucial matter dictates the propriety of discussing the other issues in this petition.

Petitioners assert that since they were not parties in the proceedings before the probate court, they could not have possibly availed of the remedy of appeal so as to question the said order before the Court of Appeals.[16] Because of this, petitioners conclude that the only remedy available to them is the special civil action of certiorari under Rule 65.[17]

The Court agrees with petitioners that the remedy of appeal under Rule 42 is not available to them since this mode of appeal can only be availed by one who was a party in the proceedings before the lower court. However, the question remains, is the certiorari available to petitioners?

The circumstances obtaining in this present case are indeed peculiar. The persons who elevated the questioned

order of the probate court to the Court of Appeals, through the special civil action of certiorari, were not parties in the proceedings before the probate court. The respondent impleaded in the petition before the probate court, herein public respondent City Engineer of Caloocan, did not pursue his appeal and the ones who elevated the questioned order are merely a group of individuals who, being the owners of the lots adjoining Lots 214-A-2-A and 214-A-2-B, claim to have an interest in the fencing of the subject lots.

Although Section 1 of Rule 65 provides that the special civil action of certiorari may be availed of by a "person aggrieved" by the orders or decisions of a tribunal, the term "person aggrieved" is not to be construed to mean that any person who feels injured by the lower court's order or decision can question the said court's disposition via certiorari. To sanction a contrary interpretation would open the floodgates to numerous and endless litigations which would undeniably lead to the clogging of court dockets and, more importantly, the harassment of the party who prevailed in the lower court.

In a situation wherein the order or decision being questioned underwent adversarial proceedings before a trial court, the "person aggrieved" referred to under Section 1 of Rule 65 who can avail of the special civil action of certiorari pertains to one who was a party in the proceedings before the lower court. The correctness of this interpretation can be gleaned from the fact that a special civil action for certiorari may be dismissed *motu proprio* if the party elevating the case failed to file a motion for reconsideration of the questioned order or decision before the lower court.[18] Obviously, only one who was a party in the case before the lower court can file a motion for reconsideration since a stranger to the litigation would not have the legal standing to interfere in the orders or decisions of the said court. In relation to this, if a non-party in the proceedings before the lower court has no standing to file a motion for reconsideration, logic would lead us to the conclusion that he would likewise have no standing to question the said order or decision before the appellate court via certiorari.

Another factor, which militates against the availability of certiorari to petitioners, is the principle that the Court will only exercise its power of judicial review if the case is brought before it by a party who has the legal standing to raise the legal question. "Legal standing" denotes a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the act that is being challenged.[19] The term "interest" means material interest as distinguished from a mere incidental interest.[20]

In the present case, aside from the fact that petitioners were not parties in the proceedings before the lower court, they have not cited any acceptable or valid basis to support their legal standing to question the probate court's order. Since respondent estate is the undisputed owner of the subject private lots, the right of the administrator to have the same fenced cannot be questioned by petitioners who do not have any vested right over the subject lots. The fact that petitioners are neighboring lot owners whose access to public roads will allegedly be affected by the fencing of the subject lots, merely gives them an incidental interest over the questioned order of the probate court and cannot serve as basis to support their legal standing to elevate the order of the probate court to the Court of Appeals and before this Court.

Although petitioners maintain that their legal basis for filing the special civil action of certiorari with the Court of Appeals and the present petition before this Court is Section 22 of Presidential Decree No. 957,[21] otherwise known as the "The Subdivision and Condominium Buyers' Protective Decree," the said section is evidently inapplicable to the present case since it pertains to the proscription imposed upon a subdivision owner or developer. In the present case, respondent estate is not a subdivision owner or developer but merely the owner of a neighboring lot. Clearly, the aforementioned law cannot serve as their basis for claiming legal standing in elevating the order of the probate court to the Court of Appeals and, consequently, before this Court.

In this regard, it is worth mentioning that the only person who can rightfully oppose the issuance of the fencing

permit is the City Engineer of Caloocan. However, after initially opposing the issuance of the fencing permit, he is now convinced of the propriety of issuing the said permit as shown by his Comment[22] to the petition, to wit:

2. With the resolution and categorical findings of the Honorable Court of Appeals that the property in question which is the subject matter of the Fencing Permit is of private ownership, herein respondent believes that petitioners have no valid ground to ask for the revocation of the questioned Fencing permit;

3. The grounds for revocation/suspension and non-issuance of Building Permits including Fencing Permits are expressly provided under Sec. 306 of P. D. 1096 otherwise known as the National Building Code. For clarity Sec. 306 of P. D. 1096 is hereby quoted:

x x x

4. There being no allegation in the Petition sustaining the aforesaid grounds for revocation of Permits, petitioners have not caused (sic) of action insofar as public respondent is concerned.

5. If petitioners believe that the fenced property is part of the street which should be reverted to the government, the remedy of petitioners is not Certiorari but to cause the proper government body to institute reversion proceedings before the courts of proper jurisdiction.

In conclusion, although petitioners are correct in claiming that the Court of Appeals erred in finding that appeal is the proper remedy to question the orders of the probate court, they are, however, mistaken in claiming that the special civil action of certiorari is available to them.

Having determined that the remedy of certiorari is not available to petitioners, the rest of the issues need no longer be discussed.

WHEREFORE, premises considered, the instant petition is hereby DENIED.

SO ORDERED.

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

[1] Records, pp. 59-61.

[2] Id., at 62.

[3] Id., at 63.

[4] Id., at 67.

[5] Id., at 68.

[6] Id., at 70.

[7] Id., at 71.

[8] Rollo, pp. 36-39.

[9] Id., at 33-34.

[10] Id., at 59.

[11] Id.

[12] Rollo, p. 18.

[13] Records, pp. 82- 97.

[14] Rollo, pp. 53-54, 59.

[15] Id., at 20.

[16] Id., at 28-29.

[17] Id., at 29.

[18] Philippine National Construction Corporation vs. NLRC, 277 SCRA 91, 100 (1997); Labudahon vs. National Labor Relations Commission, 251 SCRA 129, 133 (1995)

[19] Joya vs. Presidential Commission on Good Government, 225 SCRA 568, 576 (1993)

[20] Ibid.

[21] Id., at 27; Sec. 22. Alteration of Plans. - No owner or developer shall change or alter the roads, open spaces, infrastructures, facilities for public use and/or other form of subdivision development as contained in the approved subdivision plan and/or represented in its advertisements, without the permission of the Authority and the written conformity or consent of the duly organized homeowners association, or in the absence of the latter, by the majority of the lot buyers in the subdivision.

[22] Rollo, pp. 69-71.

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