

ATTY. CHARLES D. COLE, PETITIONER, VS. COURT OF APPEALS AND JULIETA AGDA, RESPONDENTS.*G.R. No. 137551. December 26, 2000*

Ponente: BUENA, J.

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What initially started as a simple sale of townhouse units, owned by private respondent Julieta Agda, gave rise to these five (5) consolidated petitions. These petitions are sequel to the complaint for non-delivery of title filed with the Arbiter of the Housing and Land Use Regulatory Board [hereinafter HLURB], by spouses Aurora and Luis Cinco, Leila Cingco-Jingco and Emmanuel Jingco, Lolita and Pete Cole against Agda and PNB, as mortgagee of the property.

On February 20, 1991, the HLU arbiter rendered judgment [hereinafter referred as Arbiter decision] against Agda and PNB ordering them to deliver the title to the property, free from all liens and encumbrances, and the Register of Deeds to cancel the annotation of the mortgage indebtedness.[1]

PNB appealed the Arbiter's decision to the HLU Board of Commissioners, which on February 27, 1995[2] affirmed the same. Not satisfied, PNB appealed the Board of Commissioners' decision to the Office of the President. After one year or on February 27, 1996,[3] the Office of the President affirmed the appealed decision in toto.

Agda, on the other hand, questioned the Arbiter's decision before the Court of Appeals via petition for certiorari under Rule 65 of the Rules of Court. On May 14, 1997,[4] after six (6) years from the rendition of Arbiter's decision in 1991, the COURT OF APPEALS dismissed the petition, ruling that the HLURB Rules of Procedure provided that the decision of the Arbiter may be appealed to the Board of Commissioners and thereafter to the Office of the President within the specified period. The COURT OF APPEALS even bolstered its dismissal on the ground of laches after finding that the petition was filed only six (6) years after the Arbiter's decision on February 20, 1991. This COURT OF APPEALS decision became final and executory on July 23, 1997, and an entry of judgment was made on November 13, 1997.[5]

In the meantime, on October 21, 1995,[6] Agda filed with the Regional Trial Court of Quezon City an action for rescission of contracts against spouses Lolita and Pete Cole to nullify the "Memorandum of Agreement" selling one (1) townhouse unit to them. Upon Pete Cole's death, his seven (7) children substituted him. One of his children, petitioner Charles Cole, moved to dismiss the complaint on the ground of lack of jurisdiction. When the trial court denied his motion to dismiss, petitioner Cole went to the COURT OF APPEALS under Rule 65 of the Rules of Court.

On September 15, 1997,[7] the COURT OF APPEALS, ruling on the petition, dismissed the complaint for rescission of contract filed by Agda in the trial court, ruling that Agda is engaged in forum shopping and that the Board of Commissioners' decision, rendered on February 27, 1995, is res judicata to the rescission case in the RTC. Agda appealed the COURT OF APPEALS decision before this Court. On November 9, 1998,[8] we issued

a resolution dismissing the appeal for having been filed beyond the reglementary period. This resolution became final and executory on February 2, 1999.[9]

Earlier, on August 28, 1997,[10] Agda filed with the COURT OF APPEALS a petition for annulment of judgment of the Arbiter's decision rendered on February 20, 1991, and that of the Office of the President dated February 27, 1996. Petitioner Cole moved to dismiss the petition. The inaction by the COURT OF APPEALS on his motion to dismiss led to the filing of his initial petition for mandamus with preliminary injunction and temporary restraining order with this Court, docketed as G.R. No. 137551, to compel the COURT OF APPEALS to resolve his motion to dismiss and to summarily dismiss the petition for annulment of judgment.

In spite of the proceedings for the annulment of judgment pending with the COURT OF APPEALS, questioning the decisions of the Arbiter and the Office of the President, Agda filed, on February 25, 1999,[11] with the Office of the President a petition for review, questioning the decision of the Board of Commissioners rendered way back in 1995. The Office of the President issued an Order dated March 10, 1999,[12] requiring Agda to pay the appeal fee and for the buyer spouses, who are the original complainants in the HLURB case, to file their respective memoranda. Petitioner Cole resorted once more to this Court by filing a petition under Rule 65 of the Rules of Court, docketed as G.R. No. 138249, praying for the dismissal of the new petition filed before the Office of the President. The Court, in a minute resolution dated May 26, 1999, dismissed this petition[13] and its subsequent motion for reconsideration was denied with finality.[14]

Meanwhile, on June 30, 1999,[15] the COURT OF APPEALS, thru Justice Ibay-Somera [hereinafter Somera decision] ruled on the annulment of judgment case by declaring null and void the decisions of the Arbiter dated February 20, 1991 and the Office of the President dated February 27, 1996 for having been rendered without jurisdiction. From the Somera decision, two (2) separate petitions under Rule 45 of the Rules of Court were filed with this Court. The first was filed on July 14, 1999 by Lolita Cole and her son Atty. Cole, docketed as G.R. No. 139099 and the second, on September 7, 1999, by Charito Cole-Alfaro, daughter of Lolita Cole, docketed as G.R. No. 139729.

Pending these cases, petitioner Cole moved for the execution of the Arbiter's decision, rendered on February 20, 1991 which was affirmed by the Board and the Office of the President. Due to the existence of Agda's new petition with the Office of the President, questioning said judgment, the Arbiter denied the issuance of the writ of execution on August 5, 1999.[16] As a result, on September 1, 1999, petitioner Cole filed before this Court this fifth (5th) petition, docketed as G.R. No. 139631, assailing the denial of the writ of execution and sought to compel the Arbiter to issue the writ of execution.

The court will rule on the petitions in seriatim except G.R. No. 138249 since, as aforementioned, it had been resolved with finality on 27 September 1999.

G.R. 137551

(Petition for Mandamus with prayer
for issuance of preliminary
injunction and/or restraining order)

Sought for in this petition is the dismissal of the petition for annulment of judgment filed by Agda with the COURT OF APPEALS. The relief sought by petitioner is *fait accompli* since the COURT OF APPEALS already acted on the petition for annulment of judgment by rendering the Somera decision on June 30, 1999. Well-settled is the rule that courts will not determine a moot question.[17] Hence, the petition is dismissed.

G.R. 139631

(Petition for certiorari, prohibition and mandamus with prayer for a writ of preliminary injunction and/or restraining order)

Petitioner Cole seeks the execution of the decision rendered by the Arbiter in 1991, as affirmed by the Board of Commissioners in 1995 and by the Office of the President in 1996. Considering that Agda filed a new petition with the Office of the President on February 25, 1999 against the decision of the Board of Commissioners and the promulgation of the Somera decision on June 30, 1999, the Arbiter with whom the motion for execution was filed, denied the issuance of the writ in an Order dated August 5, 1999. The denial is now the subject of the present petition to compel respondent Arbiter to issue the corresponding writ of execution.

A direct resort to this Court questioning the Arbiter's refusal to issue the writ of execution is improper and premature. The 1996 Rules of Procedure of the HLURB[18] provides that the decision of the Arbiter is reviewable by the Board of Commissioners, to wit:

"RULE XII- PETITION FOR REVIEW

"Section 1. Petition for Review.- The aggrieved party on any legal ground and upon payment of the review fee may file with the Regional Office a verified petition for review of the arbiter's decision within thirty(30) calendar days from receipt thereof. Copy of such petition shall be furnished the other party and the Board of Commissioners. No motion for reconsideration of a mere notice of petition for review from the decision shall be entertained.

"Within ten (10) calendar days from receipt of petition, the arbiter or Regional Officer shall elevate the records to the Board of Commissioners together with the summary proceedings before the arbiter. "

In turn, any party may appeal the Board of Commissioners' decision to the Office of the President within fifteen (15) calendar days from receipt thereof, thus-

"Rule XVIII - APPEAL FROM BOARD DECISIONS

"Section 1. Motion for Reconsideration. - Within the period for filing an appeal from a Board decision, order or ruling of the Board of Commissioners, any aggrieved party may file a motion for reconsideration with the Board only on the following grounds: (1) serious errors of law which would result in grave injustice if not corrected; and (2) newly discovered evidence.

"Only one (1) motion for reconsideration shall be entertained.

"Motion for reconsideration shall be assigned to the division from which the decision, order or ruling originated.

"Section 2. Appeal. - Any party may upon notice to the Board and the other party appeal a decision rendered by the Board of Commissioners en banc or by one of its divisions to the Office of the President within fifteen (15) calendar days from receipt thereof, in accordance with P.D. No. 1344 and A. O. No. 18 Series of 1987."

From the decision of the Office of the President, the aggrieved party can resort to the Court of Appeals which exercises exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders, or awards of quasi-judicial agencies, instrumentalities, boards or commissions.[19] This appellate jurisdiction of the courts is conferred by law, and may be exercised only in the manner and in accordance with the provisions thereof.[20] Petitioner should have followed the modes provided in the HLURB Rules of Procedure instead of directly involving this Court in matters where remedies are clearly set forth. As a matter of policy, such a direct recourse to this Court should not be allowed. The Supreme Court is a court of last resort, and must so remain if it is to

satisfactorily perform the functions assigned to it by the fundamental charter. It cannot, and should not be burdened with the task of dealing with causes in the first instance.[21] This is and should continue to be the policy in this regard, a policy that courts and lawyers must strictly observe.[22] Therefore, we resolve to dismiss the petition for failure to exhaust administrative remedies.

G.R. 139099 and G.R. 139729
(Petition for review under Rule 45 of
the Rules of Court with prayer for
the issuance of preliminary
injunction and/or restraining order)

Herein petitioners seek the reversal of the Somera decision rendered on June 30, 1999. What was filed in the COURT OF APPEALS was a petition for annulment of judgment of the decisions of the Arbiter and the Office of the President. Under Rule 47 of the Rules of Court, the remedy of annulment of judgment is confined to decisions of the Regional Trial Court on the ground of extrinsic fraud and lack of jurisdiction, to wit-

"RULE 47

"ANNULMENT OF JUDGMENTS OR FINAL ORDERS AND RESOLUTIONS

"SECTION 1. Coverage.--This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. (n)

"SEC. 2. Grounds for annulment.--The annulment may be based only on the ground of extrinsic fraud and lack of jurisdiction.

"Extrinsic fraud shall not be a valid ground if it was availed of, or could have been availed of, in a motion for new trial or petition for relief. (n)"

Although the grounds set forth in the petition for annulment of judgment are fraud and lack of jurisdiction, said petition cannot prosper for the simple reason that the decision sought to be annulled was not rendered by the Regional Trial Court but by an administrative agency (HLU Arbiter and Office of the President), hence, not within the jurisdiction of the Court of Appeals. There is no such remedy as annulment of judgment of the HLURB or the Office of the President. Assuming arguendo that the annulment petition can be treated as a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, the same should have been dismissed by the Court of Appeals, because no error of judgment was imputed to the HLURB and the Office of the President. Fraud and lack of jurisdiction are beyond the province of petitions under Rule 43 of the Rules of Court, as it covers only errors of judgment. A petition for annulment of judgment is an initiatory remedy, hence no error of judgment can be the subject thereof. Besides, the Arbiter and the Office of the President indisputably have jurisdiction over the cases brought before them in line with our ruling in *Francisco Sycip, Jr. vs. Court of Appeals*, [23] promulgated on March 17, 2000, where the aggrieved townhouse buyers may seek protection from the HLURB under Presidential Decree No. 957, otherwise known as "Subdivision and Condominium Buyers' Protective Decree."

WHEREFORE, in view of the foregoing disquisitions, the petitions in G.R. Nos. 137551 and 139631 are hereby DISMISSED. The petitions in G.R. Nos. 139099 and 139729 are GRANTED and the decision of the Court of Appeals dated June 30, 1999 is REVERSED and SET ASIDE. The decision of the Housing and Land Use Arbiter dated February 20, 1991, as affirmed by the Board of Commissioners and the Office of the President, is hereby REINSTATED.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

[1] The dispositive portion of the decision reads-

"WHEREFORE, judgment is hereby rendered

- Ordering respondent Agda to deliver the title to the complainants free from all liens or encumbrances;
- Ordering the Register of Deeds to cancel the annotation of the mortgage indebtedness between respondent Agda and PNB;
- Ordering the respondent PNB to separate the title of the complainants and to deliver to them their respective titles free from all liens and encumbrances;
- Ordering the respondent Agda to pay complainants attorney's fees in the amount of P20,000.00 and P20,000.00 as damages.

"IT IS SO ORDERED." [G.R. No. 139729, Rollo, p. 89-90; G.R. No. 137551, pp. 53-54 ; G.R. No. 139631, Rollo, pp. 34-35; G.R. No. 139099, Rollo, pp. 77-78].

[2] The dispositive reads-

"WHEREFORE, premises considered, the decision subject of this appeal is hereby AFFIRMED IN TOTO.

"SO ORDERED." [G.R. No. 139729, Rollo, p. 97; G.R. No. 139631, Rollo, p. 42; G.R. No. 139099, Rollo, p. 85].

[3] The decretal portion reads-

"IN VIEW OF THE FOREGOING, the instant appeal is hereby DISMISSED for lack of merit and the decision appealed from AFFIRMED in toto.

"SO ORDERED." [G.R. No. 139729, Rollo, p. 102; G.R.No.137551, Rollo, p. 59; G.R. No. 139631, p. 47].

[4] G.R. No. 139729, Rollo, pp. 131-133; G.R. No. 139631, Rollo, pp. 48-50; G.R. No. 139099, Rollo, pp. 88-90.

[5] G.R. No. 139729, Rollo, pp. 103-104; G.R. No. 137551, pp. 40-41, 213-214; G.R. No. 139631, Rollo, pp. 52-53; G.R. No.139099, Rollo, pp. 91-92.

[6] Court of Appeals' Decision, penned by Justice Aquino, dated September 15, 1997; G.R. No. 139729, Rollo, p. 107; G.R. No. 137551, Rollo, p. 63; G.R. No. 139631, Rollo, p.57; G.R. No. 139099, Rollo, p. 107.

[7] Ibid.

[8] G.R. No. 139729, Rollo, pp. 124-125; G.R. No. 137551, Rollo, pp. 33-34; G. R. No. 139631, Rollo, pp. 74-75; G.R. No. 139099, Rollo, pp. 123-124.

[9] G.R. No. 139729, Rollo, pp. 129-130; G.R. No. 137551, pp. 209-210; G.R. No. 139631, Rollo, pp. 79-80; G.R. No. 139099, Rollo, pp. 128-129.

[10] Court of Appeals decision dated June 30, 1999, p.2; G.R. No. 139729, p. 48.

[11] Office of the President's Order dated March 10, 1999; G.R. No. 138249, Rollo, pp. 30-31; G. R. No. 137551, Rollo, pp. 281-282; G.R. No. 139631, Rollo, pp. 116-117.; G.R. No. 139729, Rollo, pp. 143-144; G.R. No.

139099, Rollo, pp. 86-87.

[12] Ibid.

[13] G.R. No. 138249, Rollo, p. 185.

[14] Supreme Court Resolution dated September 27, 1999; G.R. No. 138249, Rollo, p. 316; G.R. No. 139099, Rollo, p. 317; G.R. No. 137551, Rollo, p. 272.

[15] G.R. No. 139099, Rollo, pp. 36-66; G.R. No. 137551, Rollo, pp. 289-320 , pp. 238-269; G.R. No. 139631, pp. 84-115, pp. 182-213; G. R. No. 139729, Rollo, pp. 47-77.

[16] G.R. No. 139631, Rollo, pp. 19-24, 175-180; G. R. No. 139729, Rollo, pp. 145-150.

[17] *Esperas vs. CA et.al.*, G.R. 121182, October 2, 2000 citing *City Sheriff, Iligan City vs. Fortunado* 288 SCRA 190, [1998].

[18] Amended by Resolution No. R-655, series of 1999, approved on December 15, 1999.

[19] Batas Pambansa Blg. 129, Section 19 (3).

[20] *Santiago and Flores vs. Valenzuela and Pardo*, 78 Phil. 397 [1947].

[21] *Gelindon et al vs. de la Rama et al*, 228 SCRA 322 [1993].

[22] Ibid.

[23] G.R. No. 125059.

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