SPOUSES CONSTANTINO ESPIRIDION AND REMEDIOS ESPIRIDION AND SPOUSES RENATO RAMOS AND ERLINDA RAMOS, PETITIONERS, VS. COURT OF APPEALS AND SECOND BULACAN DEVELOPMENT BANK, RESPOND...

G.R. NO. 146933. June 08, 2006

Ponente: CORONA, J.

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CORONA, J.:

This special civil action for certiorari under Rule 65 of the Rules of Court assails the August 25, 2000 resolution[1] of the Court of Appeals in CA-G.R. CV No. 66451 (1) granting the motion for writ of execution/writ of possession pending appeal of private respondent Second Bulacan Development Bank (SBDB) and (2) the September 20, 2000 resolution denying petitioner's motion for reconsideration.

On April 30, 1999, SBDB filed an amended ex-parte petition for issuance of writ of possession over a parcel of land[2] purchased by SBDB in a public auction held on August 26, 1999. It was raffled to Branch 148 of the Regional Trial Court (RTC) of Makati City and docketed as Civil Case No. 99-443.

The ex-parte petition alleged that petitioners, spouses Constantino Espiridion and Remedios Espiridion and spouses Renato Ramos and Erlinda Ramos, mortgaged the subject property to SBDB as security for a P4,200,000 loan. They failed to comply with the terms and conditions of the mortgage, hence, SBDB extrajudicially foreclosed the property. SBDB subsequently acquired the property as the lone bidder in the public auction held on August 26, 1997. Petitioners failed to redeem the property within the one-year redemption period. As a consequence, ownership of the property was consolidated in the name of SBDB.

Petitioners anchored their defense on the alleged nullity of the extrajudicial foreclosure sale. They claimed that SBDB failed to comply with several requirements of extrajudicial foreclosure: no application for extrajudicial foreclosure was filed with the office of the clerk of court of the RTC of Makati City; the docket fees were not paid and no raffle of the publication of the notice of foreclosure sale was made.

The trial court declared that it could not rule on the propriety or validity of the foreclosure sale and, as such, presumed that the extrajudicial foreclosure sale was done in a regular manner. It only resolved the issue of SBDB's entitlement to a writ of possession. Invoking the rule that the purchaser in a foreclosure sale of mortgaged property is entitled to a writ of possession and that it is ministerial on the court to issue such writ upon ex-parte petition by the purchaser, the court a quo granted SBDB's petition.

Aggrieved, petitioners filed a notice of appeal and elevated the case to the Court of Appeals. SBDB filed a motion for writ of execution/writ of possession pending appeal which the appellate court granted in its August 25, 2000 resolution. Petitioners moved for its reconsideration but the same was denied. Hence, this petition.

Petitioners claim that the Court of Appeals erred or gravely abused its discretion in issuing the writ of execution/possession pending appeal on two grounds: (a) the extrajudicial foreclosure sale was void and (b) no

justifiable basis was shown and no bond was posted.

The petition has no merit.

No abuse of discretion may properly be imputed to the appellate court. The issuance of a writ of possession to a purchaser in a public auction is a ministerial act. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right.[3] Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function.[4] The trial court has no discretion on this matter.[5] Hence, any talk of discretion in connection with such issuance is misplaced.

A clear line demarcates a discretionary act from a ministerial one. Thus:

> The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[6]

Clearly, the use of discretion and the performance of a ministerial act are mutually exclusive.

Where the court acts on a matter that is within its jurisdiction, grave abuse of discretion must be shown to nullify the act. In this case, since the issuance of the writ of possession did not involve an exercise of discretion, no abuse of discretion could have been committed by the trial court. Thus, the instant petition for certiorari has no leg to stand on.

The issue of nullity of the extrajudicial foreclosure sale was of no moment. It could not bar the issuance of the writ of possession. As a rule, any question regarding the validity of the mortgage or its foreclosure is not a legal ground for refusing the issuance of a writ of execution/writ of possession.[7]

The fact that no bond was posted by SBDB was also of no consequence. Since ownership of the property had already been consolidated in the name of the bank, there was nothing legally questionable in the issuance of the writ of possession even if no bond was posted. The posting of a bond as a condition for the issuance of the writ of possession becomes necessary only if it is applied for within one year from the registration of the sale with the register of deeds, i.e., during the redemption period[8] inasmuch as ownership has not yet vested on the creditor-mortgagee. After the one-year period, however, the mortgagor loses all interest over it.[9] The purchaser, who has a right to possession that extends after the expiration of the redemption period, becomes the absolute owner of the property when no redemption is made.[10] Thus, the posting of a bond is no longer needed.[11]WHEREFORE, the petition is hereby DISMISSED.

Costs against petitioners.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

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[1] Penned by Associate Justice Eloy R. Bello, Jr. and concurred in by Associate Justices Delilah Vidallon-Magtolis and Elvi John S. Asuncion of the 13th Division of the Court of Appeals; rollo, pp. 23-24. [2] Registered under TCT No. 170136.[3] De Vera v. Agloro, G.R. No. 155673, 14 January 2005, 448 SCRA 203.[4] Id.[5] China Banking Corporation v. Spouses Ordinario, 447 Phil. 557 (2003).[6] Codilla, Sr. v. de Venecia, 442

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Phil. 139 (2002).[7] Supra at note 3.[8] Section 7, Act No. 3135.[9] Sps. Yulienco v. Court of Appeals, 441 Phil. 397 (2002).[10] Samson v. Rivera, G.R. No. 154355, 20 May 2004, 498 SCRA 759.[11] Cf. De Vera v. Agloro, supra.

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