SPOUSES NORBERTO ABAGA AND CALIXTA ABAGA, REPRESENTED IN THIS APPEAL BY ATTORNEYS-IN-FACT MARIA ASUNCION ABAGA AND SIMON CESAR ABAGA, PETITIONERS, VS. SPOUSES ELISEO PANES AND R...

G.R. No. 147044. August 24, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari assailing the Decision[1] of the Court of Appeals rendered on October 13, 2000 in CA-G.R. SP No. 58941.

Records show that on February 22, 1989, spouses Eliseo and Rogelia Panes, respondents, filed with the Regional Trial Court (RTC), Branch 142, Makati City a complaint for specific performance against spouses Norberto and Calixta Abaga, petitioners, docketed as Civil Case No. 89-3269. Respondents alleged in their complaint that petitioners assigned to them one-half (1/2) of a 255-square meter lot located at No. 20, South CEMBO, Fort Bonifacio, Makati City. Petitioners agreed to give respondents such share in exchange for the use of the latter's building permit. This building permit was to be used for the construction of petitioners' house on the other half of the lot.

On August 9, 1990, the RTC rendered a Decision in favor of respondents. The dispositive portion reads:

> WHEREFORE, there being no valid defense raised to controvert plaintiffs' claim over one-half of the 255 square meter land in question, the Court hereby renders judgment ordering defendants spouses Norberto & Calixta Abaga to:
>
> - Execute a Deed of Assignment in favor of the plaintiffs of the aforesaid interest in one-half (1/2) of the lot known as No. 20. South Cembo, Fort Bonifacio, Makati, Metro Manila with an area of 255 square meters, more or less, said portion to include Laydo's one-fourth holding;
>
> - Pay the plaintiffs P10,000.00 as and for attorney's fees; and
>
> - Pay the costs of suit.
>
> SO ORDERED.

On appeal, docketed as CA-G.R. CV No. 29559, the Court of Appeals, in its Decision, affirmed with modification the judgment of the RTC in the sense that the award of attorney's fees was reduced to only P5,000.00.

Petitioners then filed with this Court a petition for review on certiorari, docketed as G.R. No. 107198.

In a Resolution dated August 2, 1993, this Court denied the petition. Petitioners did not file a motion for reconsideration. Thus the Resolution became final. An Entry of Judgment was made on September 8, 1993.

Upon respondents' motion, the trial court issued an Order dated September 22, 1997 requiring petitioners to

execute a Deed of Assignment transferring 72 square meters to respondents, thus:

> WHEREFORE, premises considered, the defendants are hereby ordered to execute the necessary Deed of Assignment over the 72 square meters of the lot located at No. 20, South Cembo, Fort Bonifacio, Makati City, in favor of the plaintiffs within 10 days from receipt of this order.
>
> SO ORDERED.

Records show that the local government of Makati City expropriated a portion of the subject lot; hence, the Order of September 22, 1997 covers an area of only 72 square meters.

Petitioners filed a motion for reconsideration of the foregoing, but in its Order dated February 11, 1999, the trial court denied reconsideration.

Thereupon, respondents filed with the trial court a Motion for the Issuance of an Alias Writ of Execution which was opposed by petitioners. Shortly thereafter, petitioners manifested before the trial court that they were willing to purchase the 72 square meters due to respondents at a price of P1,000.00 per square meter. However, respondents rejected the offer. Instead, they filed with the trial court a "Motion to Order the Clerk of Court or Any Person To Execute The Deed of Assignment." In its Order dated March 28, 2000, the trial court denied the motion, thus:

> Acting on the MOTION TO ORDER THE CLERK OF COURT OF ANY PERSON TO EXECUTE DEED OF ASSIGNMENT filed by plaintiffs thru counsel, the same is hereby DENIED by this Court for lack of merit.
>
> SO ORDERED.

Dissatisfied by this turn of events, respondents filed with the Court of Appeals a petition for mandamus, docketed as CA-G.R. SP No. 58941, to compel the trial court to execute the final and executory judgment in Civil Case No. 89-3269.

On October 13, 2000, the Court of Appeals granted the petition, thus:

> WHEREFORE, premises considered, the instant petition for mandamus is hereby GRANTED. The respondent court is hereby ordered to ISSUE the corresponding writ of execution ordering the Clerk of Court or any person to execute, at the respondent's cost, a Deed of Assignment of one-half of the remaining 144 square meter portion of the property in controversy to the petitioners, pursuant to Rule 39, Section 10 of the 1997 Rules of Civil Procedure.
>
> SO ORDERED.

Petitioners filed a motion for reconsideration, but it was denied by the appellate court in its Resolution dated January 30, 2001.

Hence, this petition.

Mandamus is a command issuing from a court of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law.[2] Section 3, Rule 65, of the 1997 Rules of Civil Procedure, as amended, reproduced below, governs the issuance of the writ of mandamus in this jurisdiction.

> SEC. 3. Petition for mandamus. - When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station,

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> or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy, and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.
> The petition shall also contain a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

From the foregoing Rule, there are two situations when a writ of mandamus may issue: (1) when any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or (2) when any tribunal, corporation, board, officer or person unlawfully excludes another from the use and enjoyment of a right or office to which the other is entitled. The "duty" mentioned in the first situation is a ministerial duty, not a discretionary duty, requiring the exercise of judgment.[3] The "right" mentioned in the second situation must be a well-defined, clear and certain, one that has been established by law.[4] In short, for mandamus to lie,[5] the duty sought to be compelled to be performed must be a ministerial duty, not a discretionary duty, and the petitioner must show that he has a well-defined, clear and certain right. It thus behooves this Court to determine whether these requirements have been satisfied.

Anent the existence of a ministerial duty, we reiterate that when the RTC Decision in Civil Case No. 89-3269 became final and executory, upon respondents' motion, the RTC issued an Order on September 22, 1997 directing petitioners to execute the necessary Deed of Assignment of the 72 square meters of the subject lot in favor of respondents. The RTC Decision was affirmed by the Court of Appeals in CA-G.R. CV No. 29559 and further affirmed with finality by this Court in G.R. No. 107198. Finally, the Entry of Judgment in G.R. No. 107198 was made on September 8, 1993. Thus, there is no question that the judgment sought to be enforced by respondents herein had long become final and executory. Section 1, Rule 39 of the same Rules provides:

> SEC. 1. Execution upon judgments or final orders. - Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.
> If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment oblige, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.
> The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution.

The principle enunciated in the foregoing Rule is that final and executory judgments must be executed as a matter of right[6] and it becomes a ministerial duty of the court to issue a writ of execution to enforce the judgment, meaning the court has the duty to see to it that the claim of the prevailing party is fully satisfied from the properties of the losing party.[7]

We agree with the Court of Appeals that in denying respondents' "Motion to Order the Clerk of Court of Any Person To Execute Deed of Assignment," the trial court deprived respondents of a right enjoined by law. Apparently, the trial court lost sight of Section 10 (a), Rule 39, which applies to the present incident, thus:

SEC. 10. Execution of judgments for specific act. -
(a) Conveyance, delivery of deeds, or other specific acts vesting title. - If a judgment directs a party to execute a conveyance of land or personal property, or to deliver deeds or other documents, or to perform any other specific act in connection therewith, and the party fails to comply within the time specified, the court may direct the act to

be done at the cost of the disobedient party by some other person appointed by the court and the act when so done shall have like effects as if done by the party. If real or personal property is situated within the Philippines, the court in lieu of directing a conveyance thereof may by an order divest the title of any party and vest it in others, which shall have the force and effect of a conveyance executed in due form of law.

In Caluag v. Pecson,[8] we ruled that where the judgment directs the losing party to execute a conveyance, deliver a deed or other documents or to perform any specific act in connection therewith, these acts can be performed by other persons upon his refusal to comply. The court shall appoint another person to perform the act which shall then be done at the expense of the losing party. The effect shall be as if it were done by the losing party himself.

Verily, we held that the Court of Appeals did not commit a reversible error of law in issuing the assailed writ of mandamus, there being a clear showing that the trial court has a ministerial duty to see to it that its judgment is executed.

WHEREFORE, we DENY the petition. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 58941 is AFFIRMED in toto. Costs against the petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Garcia, JJ., concur.

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[1]Rollo, pp. 24-30. Per Associate Justice Rodrigo V. Cosico and concurred in by Associate Justice Ramon A. Barcelona (retired) and Associate Justice Bienvenido L. Reyes.

[2] Professional Regulation Commission v. De Guzman, G.R. No. 144681, June 21, 2004, 432 SCRA 505, 518, citing United States v. Boutwell, 17 Wall (US) 604, 21 L.Ed. 721; Laizure v. Baker, 11 P.2d 560; State ex rel Lyons v. McDowell, 57 A.2d 94; Rader v. Burton, 122 N.E. 2d 856; Board of Managers v. City of Wilmington, 70 S.E. 2d 833.

[3] Samson v. Office of the Ombudsman, G.R. No. 117741, September 29, 2004, 439 SCRA 315, 325, citing Lim v. Sabarre; 24 SCRA 76 (1968); Gonzales v. Serrano, 25 SCRA 64 (1968); Sy Ha v. Galang, 117 Phil. 798, 7 SCRA 797 (1963); Mata v. San Diego, 63 SCRA 170 (1975).

[4]Tam Wing Tak v. Makasiar, G.R. No. 122452, January 29, 2001, 350 SCRA 475, 484, citing Garces v. Court of Appeals, 259 SCRA 99 (1996).

[5]Quelnan v. VHF Phils. Inc., G.R. No. 145911, July 7, 2004, 433 SCRA 631, 635, citing Anchangco, Jr. v. Ombudsman, 268 SCRA 301 (1997); Sales v. Mathay, Sr., 129 SCRA 180 (1984).

[6] Far Eastern Surety & Insurance Co., Inc. v. Vda. de Hernandez, G.R. No. 30359, October 3, 1975, 67 SCRA 256, citing Pamintuan v. Muñoz, 22 SCRA 1111 (1968).

[7] See Bayer Phils. Inc., v. Agana, G.R. No. 28701, April 8, 1975, 63 SCRA 355.

[8] 82 Phil. 8 (1948).

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