

TOMAS ALVAREZ AND FRANCISCO BASILIO, PLAINTIFFS AND APPELLEES, VS. BOARD OF LIQUIDATORS, COMPOSED OF FILOMENO KINTANAR, AS CHAIRMAN, BARTOLOME FERNANDEZ AND ELADIO FERNANDEZ, ME...

G.R. No. 14834. January 31, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a decision of the Court of First Instance of Davao, Hon. Wenceslao L. Fernan, presiding, in Civil Case No. 2135, declaring that the Board of Liquidators has no authority or jurisdiction to cancel a sale executed by the National Abaca and Other Fibers Corporation (NAFCO) in favor of Tomas Alvarez and that said Board's resolution dated September 19, 1956, cancelling the above-mentioned sale and ordering the disposal of the lot in favor of other persons, is null and void.

The said case (No. 2135, CFI of Davao) is an action filed in the Court of First Instance to annul a decision of the Board of Liquidators, Davao branch, cancelling the sale of lot No. 52 of the Daliaon Plantation, made to Tomas Alvarez and declaring forfeited two installments thereon made by Alvarez, awarding portion of said lot No. 52 (Lot B in Tinio's Plan Z) to another (Zacarias Alfafara), and declaring said portion vacant and disposable by lottery. The complaint alleges that the administrative investigation ordered by the Board of liquidators was made by a partial investigator, after denial of a motion to defer said investigation because of the pendency of an action for ejectment filed by plaintiff against another claimant of the same lot, and furthermore, that the action of the Board of Liquidators is without authority of law.

Defendants moved to dismiss the action on the ground that the court is without jurisdiction to try the case, that the action is not the proper remedy, and that the complaint states no cause of action. The movant claimed that the court lacked jurisdiction over the subject matter because the same involves disposition of NAFCO lands, and that if the board exceeded its powers, an ordinary action in court would not be the proper remedy. This motion, however, was denied. So defendants presented their answer.

The answer contains denials of the allegations of the complaint, and as special defenses, alleges that the lot subject of the action is a portion of the Public domain disposable by the defendant Board of Liquidators under Republic Act No. 477 and Executive Order No. 372, dated November 24, 1950; that a protest was filed against the sale to Alvarez; that an investigation of the contest was conducted by an officer of the Board of Liquidators in accordance with the provisions of the Public Land Law; that plaintiffs were notified of the protest, but plaintiffs objected to the investigation on the ground that the investigating officer is partial and, therefore, repudiated the jurisdiction of the Board of Liquidators over the contest; that sufficient opportunity was given plaintiffs to appear, after notice of the denial of plaintiff's petition for deferment (postponement), but they refused to appear at the investigation; that plaintiff Alvarez was not in possession of the lands subject of the sale in question at the time of the sale and this was enough reason for the cancellation of his sale contract, etc. The answer also contains

appendices, among which are the protest against the sale to Alvarez (Annex "1" and "1-a"); resolution of the Board of Liquidators annulling the sale to Alvarez (Annex "2"); notice by investigator to Alvarez of hearing (Annexes "2", "2-A", "3-B", "3-C" and "3-D"); refusal of Alvarez to submit to investigation (Annex "4"); and copy of proceedings of the investigation wherein it was shown that Alvarez was never in possession of the contested lot.

The parties did not go into trial but instead submitted a very long stipulation of facts, the most pertinent paragraphs of which are as follows:

"9. That notice of the above-referred protest with copies of protest attached, was made to the plaintiffs, as per letter dated September 10, 1954, Which letter is attached as Annex '3' to the answer of the Board, of Liquidators, and which is hereby marked, offered and submitted as Exhibit '4' for the defendants.

"10. That the notice with the copies of the protest was received by the plaintiffs, Francisco Basilio, on the same date, on September 10, 1954, and that the plaintiffs, instead of pleading and appearing in the investigation scheduled on September 16, 1954, as per said notice, wrote the Investigator, Atty. Anacleto K. Bajenting a letter dated September 14, 1954, stating among others that they could not submit to such investigation in view of the pendency of Civil Case No. 1303, a true copy is attached as Annex '4' to the answer of the defendant Board of liquidators, and which is hereby marked, offered and submitted as Exhibit 'D' for the plaintiffs and Exhibit '5' for the defendants.

"11. That the Legal Officer of the Davao Branch of the defendant Board of Liquidators proceeded with the investigation in the absence of the plaintiffs, which investigation was commenced on November 12, 1954 and terminated December 18, 1954, and reported to the Board of Liquidators on January 14, 1955 in a report dated January 12, 1955 consisting of 62 useful pages fastened together, each page duly signed, and which is hereby marked, offered and submitted as Exhibit '6' for the defendants.

"12. That on September 24, 1955, the Administrator, Alien Property, Board of Liquidators, directed Atty. Anacleto K. Bajenting to make 'a last effort... to have Messrs. Tomas Alvarez and Francisco Basilio submit to an investigation', as per letter quoted in the notice dated September 30, 1955, consisting of two useful pages attached to the answer of the defendant Board of Liquidators as Annex '3-B', and which is hereby marked, offered and submitted as Exhibit '7' for the defendants, and Exhibit 'E' for the plaintiffs, said notice being the one referred to par. 6 of the complaints.

"Accordingly on September 30, 1955, the Legal Officer of the Board wrote plaintiffs a letter giving them 'ten days from receipt hereof to appear before said Office and to explain your side of the conflict' copy of which is marked as Exhibit 'E' for plaintiffs.

"13. That on October 10, 1955, the plaintiffs, thru their counsel, wrote a letter to the Administrator, Alien Property, Board of Liquidators, requesting that administrative investigation be deferred until after the decision of Civil Case No. 1303, then pending trial before this Court, as per letter true copy of which is hereby marked, offered and submitted as Exhibit 'F' for the plaintiffs, this being the same letter referred to in par. 7 of the complaint.

"14. That the Officer-in-charge, the defendant Miguel R. Diccion, received a letter dated December 8, 1955, informing him to the effect that administrative investigation over the lot in question 'may be continued despite the pendency of the Civil Case' (referring to Civil Case No. 1303), and this letter of the Administrator, Alien Property, Board of Liquidators, was brought to the notice of the plaintiffs, again thru counsel, as per notice of the Legal Officer dated December 16, 1955, in which notice plaintiffs were required 'to submit such investigation within 15 days' true copy of which is attached to the answer of the defendant Board of Liquidators as Annex '3-D', and hereby marked, offered and submitted as Exhibit '8' for the defendants, and Exhibit 'G' for the plaintiffs, said notice being the same notice referred to in par. 8 of the complaint.

"15. That upon receipt of said notice, Exhibit 'G' plaintiffs wired the Administrator, Alien Property, Board of Liquidators requesting for investigator other than Atty. Anacleto K. Bajenting, as per telegram copy of which is hereby marked, offered and submitted as Exhibit 'H' for the plaintiffs.

"16. That ignoring the request contained in above-mentioned wire, the Board of Liquidators, acting upon the recommendation of its Legal Officer, Atty. Anacleto K. Bajenting contained in Exhibit '6' for the defendants, on September 24, 1956 ordered the cancellation of the sale of Lot No. 52 in favor of Tomas Alvarez; ordered the forfeiture of all payments made by Tomas Alvarez for the purchase of the said lot; as well as the forfeiture of the improvements introduced on the lot; awarded a portion of the said Lot No. 52 to defendant Zacarias Alfara; and declared vacant the remaining portion of Lot No. 52, ordering the sale of the portion declared vacant through lottery, as per Resolution No. 8104 of the Board of Liquidators approved in the meeting of September 19, 1956 true copy of which is attached as Annex '2' to the answer of the Board of Liquidators and hereby marked, offered and submitted as Exhibit '9' for defendants and which Resolution was brought to the knowledge of the plaintiffs in the notice dated September 28, 1956, addressed to the plaintiffs and attached to the complaint as Annex 'B' and 'B-1' (these being only a single letter of two pages), and which is hereby marked, offered and submitted as Exhibit '1' for the plaintiffs and Exhibit '9-A' for the defendants,

"18. That the plaintiff Tomas Alvarez, so far, has only paid the first and second installments of the sales price of the lot in question in accordance with the deed of sale heretofore marked as Exhibit 'A' and '1' for the plaintiffs and defendants, respectively, corresponding to installments for the first two (2) years following October 18, 1960, the date said plaintiff Tomas Alvarez acknowledged the deed of sale, and that said plaintiff defaulted in the payment of all annual installments thereafter.

"19. That the plaintiff, Tomas Alvarez, on September 28, 1950, executed a power of attorney, affecting the lot in question in favor of the herein plaintiff, Francisco Basilio, a copy of which is hereby marked, offered and submitted as Exhibit 'J' for the plaintiffs and Exhibit '10' for the defendants, this being the same power of attorney referred to in paragraph 1 of the complaint.

"20. That after the filing and during the pendency of the administrative protest filed by Cipriana Barabat and Zacarias Alfara, the plaintiffs went to the office of the Davao Branch of defendant Board of Liquidators in order to pay the installments due of the unpaid purchase price of the lot in question, but said offer of payment was rejected by the collector on account of standing order by Atty. Anacleto K. Bajenting, the Legal Officer, not to accept payment, noted on the back of the index of payment card for the lot in question, as per photostatic copy thereof hereby marked, offered and submitted as Exhibit 'K' for the plaintiffs.

"21. That the plaintiffs Francisco Basilio, and the protestants, Cipriana Barabat and Zacarias Alfara, and the principal of said Cipriana Barabat in the person of Zoilo Nemenzo, are occupantawardees in their respective names and rights certain portion of the Daliaoh Plantation, as follows:

Names

Lot No.

Area

(Tinio Plan)

(Hectares)

a. Z. Alfara

51

4.6394

b. C. Barabat

39

6.4558

c. F. Basilio

69

9.9613

d. Z. Nemenzo

53

10.1332

all of which lots are under the disposition of the defendant Board of Liquidators under the same circumstances and condition as the lot in question."

On the facts submitted in the stipulation, the court entered the decision already mentioned above in the following words:

"* * * In the present case, while the Public Land Law conferred upon the Bureau of Lands semi-judicial functions to cancel or revoke, yet, this same power was not granted to the Board of Liquidators in accordance with Republic Act No. 477.

"There is another point in the present case which involves due process of law that, to the mind of the Court, merits serious consideration. The plaintiff here had consistently prayed that the administrative investigation to be conducted by Atty. Bajenting be held in abeyance until the termination of Civil Case No. 1303. This request was denied by the Board of Liquidators which ordered the ex-parte investigation without the presence of the plaintiff, Tomas Alvarez. By doing so in cancelling the contract of sale without giving a chance to Tomas Alvarez, to present his side of the case, the plaintiff, Tomas Alvarez, was not given due process of law in protecting his rights and interest in the lot in question. For purposes of administrative investigation Tomas Alvarez should be given a chance to be heard by granting his petition that investigation be conducted only after Civil Case No. 1303 is terminated by the Court, or that another investigator be appointed in lieu of Atty. Bajenting.

* * * * *

"In view of the foregoing, this Court feels constrained to hold that the Board of Liquidators has no authority or jurisdiction to cancel the sale executed by the NAFCO and Tomas Alvarez, and, consequently, Resolution No. 3104, dated September 19, 1956, passed by the Board of Liquidators and the disposition of said lot in favor of other persons are hereby declared null and void, without special pronouncement as to costs."

The defendants have appealed from the above decision assigning the following errors:

I

The trial court erred in trying the case when it has no power to issue an order enforceable against respondent Board of Liquidators.

II

The trial court erred in trying the case when plaintiffs have not yet exhausted available administrative

remedies.

III

The trial court erred in holding that the Board of Liquidators has no power to cancel the contract of sale.

IV

The trial court erred in not ordering the cancellation of the sale to plaintiff in question for breach of contract as alleged! in the counterclaim.

V

The trial court erred in not dismissing the complaint.

The first assignment of error involves the jurisdiction of the court to take cognizance of the subject matter of the action, it being alleged that the court has no power to issue an order enforceable against the respondent Board of liquidators. This same objection was raised in the motion to dismiss. This objection, however, is closely related to the second assignment of error, namely, that the plaintiffs have not exhausted their administrative remedies before filing the action. The power to dispose of the lands placed under the administration of the Board of Liquidators is lodged in said board. There is no provision of law authorizing courts to review decisions of the Board of Liquidators and to take cognizance of actions to annul awards of sale or any other action made by it pursuant to the authority granted it by law. If the courts are to take cognizance of cases involving errors or abuse of power exercised by the Board of Liquidators, the remedy would be by means of an action of certiorari or prohibition to set aside the orders or decisions of the Board. But this special civil action would not lie unless there is an allegation of abuse of discretion or a lack of jurisdiction. In the case at bar, it is not claimed that the Board lacked jurisdiction, so that an action would lie only in case there has been an abuse of discretion by it (Board of Liquidators) in the exercise of its powers. The remedy would be either certiorari or prohibition, and not a direct action of annulment as the one instituted in this case.

But even if the action instituted in the Court of First Instance were to be taken or considered as a special civil action of prohibition, still we find that the action would not lie, first, because the plaintiff has not exhausted his administrative remedies in accordance with the rules and principles set forth by this Court (See *Lubugan vs. Gastrillo*, G. R. No. L-1052, May 29, 1957; *Cebedo, et al. vs. Dir. of Lands, et al.*, G. R. No. L-12777, May 23, 1961; *Booc vs. Osmeña*, *Perez vs. City Mayor of Cabanatuan*, G.R. No. L-16786, Oct. 31, 1961), and second, because there was no abuse of discretion in the exercise of its powers resulting in the cancellation of the sale in favor of the plaintiffs.

The plaintiffs-appellees in their brief argue that the Board of Liquidators has no power under the provisions of Republic Act No. 477 to cancel the sale. Paragraphs 22, 23, and 24 of the stipulation of facts, which are as follows:

"22. That under the procedure adopted by the Board of Liquidators in the implementation of the provisions of Republic Act No. 477, as regards public agricultural lands like the lot in question, once the awardee pays in full the consideration agreed upon in the deed of sale, the defendant Board of Liquidators, thru the defendant Miguel R. Diccion who is a Deputy Public Lands Inspector, conducts the final investigation to determine whether the awardee has complied with all the requisites for the issuance of a sales patent in accordance with the provisions of the Public Land Law, as amended.

"23. That if in the investigation it is shown that the awardee has complied with the said requisites, the defendant Board of Liquidators, forwards the deed of sale to the Bureau of Lands with the report of the final investigation and recommendation for the issuance of the sales patent, and thereafter the rights of the awardee

takes the course of an ordinary sales application as if originally filed with the Bureau of Lands under the provisions of the Public Land Law, as amended.

"24. And that if in the final investigation it is shown that the awardee has not complied with the provisions of Republic Act No. 477 and the pertinent provisions of the Public Land Law, as amended, relative to the requisites for the issuance of a sales patent, the issuance of the same shall not be recommended."

recognize the right of the Board of Liquidators to cancel or give due course to a sales contract or application. In the case at bar, the plaintiff-appellee Tomas Alvarez had not yet paid all the installments for the lot, so that under paragraph 22 of the stipulation of facts he would not yet be entitled to an investigation to determine compliance with the requisites for the issuance of a sales patent. The hearing ordered by the Board of Liquidators was to determine the conflicting claims of Tomas Alvarez and Francisco Basilio, on the one hand, and appellants Miguel Diccion and Zacarias Alfafara, on the other. It was in this investigation where it was found that Tomas Alvarez was never in possession of the land, but that the same was in the possession of another, and where the investigating officer further found that Tomas Alvarez was just a dummy of Francisco Basilio who no longer could acquire a parcel of land from the Board of Liquidators because he already had purchased another parcel from said body, and a person is disqualified from purchasing more than one lot. The agreement which the Board denominated "contract of sale," is not really a deed of actual sale, but should be considered as a mere application on the part of Tomas Alvarez. After the approval of such application it was still necessary to have Alvarez' qualifications investigated as well as whether or not he has complied with the provisions of the laws regarding the disposition of lands by the Board of Liquidators. The "contract of sale" so-called was not an ordinary deed of sale of properties but, as shown by the above-quoted stipulations, was merely an application subject to revocation in case the applicant is found not to possess the qualifications necessary. The Board found that Alvarez is not qualified because he did not actually occupy the land but merely served as a dummy of another who was disqualified to get this lot, having already purchased one lot from the Board of Liquidators. The argument, therefore, that the Board of Liquidators had no power under the circumstances to order the cancellation of the sale is without foundation either in law or in fact.

The above considerations fully cover the assignments of error Nos. 3 and 4, and further discussion thereof is unnecessary.

Wherefore, the decision rendered by the Court of First Instance of Davao is hereby set aside and the action dismissed. With costs against plaintiffs-appellees.

Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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