

ZENAIDA BUGARIN, VIOLETA ABANO, LIZA ABAYATA, ANTONIO ALEGRE, REMEDIOS ALEGRE, CHRIS ANASCO, JEFFREY ARQUILLOS, LOURDES BAGARESE, EUGENIA BARAQUIL, PRECIOS BASOY, RANNY BASOY, F...

G.R. NO. 157985. December 02, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Before us is a petition for review on certiorari assailing the Order[1] dated April 30, 2003 and the Special Order of Demolition[2] dated May 9, 2003 of the Metropolitan Trial Court (MeTC) of Parañaque City, Branch 77. Petitioners had applied for the issuance of a temporary restraining order (TRO) but the Court in a resolution[3] dated May 15, 2003 denied the application.

The facts in this case, culled from the record, are as follows.

The present controversy arose from a complaint for ejectment, docketed as Civil Case No. 11799, filed before the MeTC by private respondents Cecilia B. Palisoc and Marina B. Mata. In a decision[4] dated February 27, 2002, the court declared respondents as the rightful possessors of the properties in dispute. It also ordered the petitioners to vacate the premises and pay to private respondents the rentals.

Petitioners appealed to the Regional Trial Court (RTC) of Parañaque City, Branch 274 while private respondents moved for execution pending appeal. On January 8, 2003, the RTC affirmed the MeTC decision with the modification that petitioners must start paying rentals from the date of the appealed decision.

On January 28, 2003, petitioners filed a Motion for Reconsideration with Opposition to the Issuance of a Writ of Execution. In an order dated March 3, 2003, the RTC denied the motion and granted private respondents' motion for execution for failure of petitioners to post a supersedeas bond or to pay the back rentals. Thus, a writ of execution pending appeal was issued. On March 7, 2003, petitioners were served with the writ and notice to vacate.

On March 11, 2003, petitioners filed a Motion to Defer Implementation of the Writ of Execution. On March 14, 2003, private respondents filed a Motion to Issue a Special Order of Demolition since petitioners refused to vacate the premises. The RTC deferred action on the motions to allow petitioners to exhaust legal remedies available to them.

Petitioners thereafter filed a Supplement to the Motion to Defer Implementation of Writ of Execution and Opposition to Motion to Issue Special Order of Demolition, contending that Section 28 of Republic Act No. 7279[5] was not complied with.

On April 4, 2003, private respondents filed a Motion Reiterating the Motion for Issuance of Special Order of Demolition. In an order dated April 11, 2003, the RTC declared the decision denying petitioners' appeal final and

executory, and remanded the records of the case to the MeTC without acting on the motions.

However, on April 10, 2003, petitioners filed a Petition for Certiorari and Prohibition with Prayer for Preliminary Prohibitory Injunction before the Court of Appeals. They also filed an Urgent Vigorous Opposition and Motion to Suspend Proceedings on respondents' Motion Reiterating the Motion for Issuance of Special Order of Demolition before the MeTC.

The MeTC set the Motion for the Issuance of Special Order of Demolition for hearing. The court granted said motion on April 30, 2003, but gave petitioners five (5) days from receipt of its order to voluntarily vacate the premises and remove all structures and improvements made thereon.

On May 6, 2003, MeTC Branch Sheriff Reynaldo T. Nepomuceno reported that petitioners refused to vacate the premises. Petitioners instead filed a Motion to Quash and Recall the Order dated April 30, 2003 and/or Special Order of Demolition. The MeTC denied the motion and issued the Special Order of Demolition on May 9, 2003.

Hence, this petition where petitioners raise the lone error that

THE COURT A QUO, IN BRUSHING ASIDE REPUBLIC ACT [NO.] 7279 IN THE RESOLUTION OF THE CASE AGAINST THESE UNDERPRIVILEGED PETITIONERS, HAS DECIDED A QUESTION OF SUBSTANCE, NOT THERETOFORE DETERMINED BY THE SUPREME COURT, AND/OR HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT.[6]

Simply, the issue is, are the Orders of the MeTC proper?

Petitioners contend that the Orders of the MeTC violated the mandatory requirements of Section 28[7] of Rep. Act No. 7279 since there was no 30-day notice prior to the date of eviction or demolition and there had been no consultation on the matter of resettlement. They also claim that there was neither relocation nor financial assistance given. They insist that the MeTC orders are patently unreasonable, impossible and in violation of the law.[8]

Private respondents for their part argue that Rep. Act No. 7279 is not applicable. They aver that there was no proof that petitioners are registered as eligible socialized housing program beneficiaries in accordance with procedure set forth in the Implementing Rules and Regulations Governing the Registration of Socialized Housing Beneficiaries issued by the Department of Interior and Local Government and the Housing and Urban Development Coordinating Council. They aver that even if Rep. Act No. 7279 was applicable, the required notices under the law had already been complied with. According to them, petitioners were already notified on March 7, 2003 of an impending demolition, when the writ of execution was served.[9]

We find for respondents.

Under Section 19,[10] Rule 70 of the Revised Rules on Civil Procedure, a judgment on a forcible entry and detainer action is immediately executory to avoid further injustice to a lawful possessor, and the court's duty to order the execution is practically ministerial.[11] The defendant may stay it only by (a) perfecting an appeal; (b) filing a supersedeas bond; and (c) making a periodic deposit of the rental or reasonable compensation for the use and occupancy of the property during the pendency of the appeal.[12] Once the Regional Trial Court decides on the appeal, such decision is immediately executory under Section 21,[13] Rule 70, without prejudice to an appeal, via a petition for review, before the Court of Appeals or Supreme Court.[14]

However, petitioners failed to file a petition for review. Records show that petitioners received on March 12, 2003 the RTC decision denying their motion for reconsideration. They had until March 27, 2003 to file a petition for

review before the Court of Appeals. Instead, they filed a petition for certiorari and prohibition on April 10, 2003. In said petition, which is still pending, petitioners contended that the RTC committed grave abuse of discretion in affirming the MeTC decision and insisted that the latter court had no jurisdiction over the complaint.

The remedy to obtain reversal or modification of the judgment on the merits in the instant case is appeal. This holds true even if the error ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of fact or of law set out in the decision. The existence and availability of the right of appeal prohibits the resort to certiorari because one of the requirements for the latter remedy is that "there should be no appeal." [15]

Clearly, petitioners' petition for certiorari before the Court of Appeals was filed as a substitute for the lost remedy of appeal. Certiorari is not and cannot be made a substitute for an appeal where the latter remedy is available but was lost through fault or negligence. [16] Thus, the filing of the petition for certiorari did not prevent the RTC decision from becoming final and executory. [17] The RTC acted correctly when it remanded the case to the court of origin in the order dated April 11, 2003. [18]

Thus, we find that the MeTC cannot be faulted for issuing the assailed orders to enforce the RTC judgment. Both orders were issued after the requisite notice and hearing. Moreover, the Court of Appeals did not issue any writ of preliminary injunction to stay the execution of the judgment.

Petitioners tried to stay the execution of the order of demolition by filing a petition for review with prayer for TRO before us. We earlier denied said prayer for TRO. We also find petitioners' contention that the said orders violated Rep. Act No. 7279, particularly Section 28(c), [19] totally without merit. Under the provision, eviction or demolition may be allowed when there is a court order for eviction and demolition, as in the case at bar. Moreover, nothing is shown on record that petitioners are underprivileged and homeless citizens as defined in Section 3(t) of Rep. Act No. 7279. [20] The procedure for the execution of the eviction or demolition order under Section 28(c) is, in our view, not applicable.

It also appears that the order of demolition had already been executed. Petitioners had already vacated the area and private respondents now possess the properties free from all occupants, as evidenced by the sheriff's turn-over of possession dated May 19, 2003. Thus, the instant case before us has indeed become moot and academic.

WHEREFORE, the petition for review assailing the Order dated April 30, 2003 and the Special Order of Demolition dated May 9, 2003 of the Metropolitan Trial Court of Parañaque City, Branch 77, is DENIED for mootness and lack of merit.

SO ORDERED.

Davide Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, p. 30.

[2] Id. at 25-29.

[3] Id. at 36-38.

[4] Id. at 31-35.

[5] An Act to Provide for a Comprehensive and Continuing Urban Development and Housing Program, Establish the Mechanism for its Implementation, and for other purposes.

Section 28. Eviction and Demolition.—Eviction or demolition as a practice shall be discouraged. Eviction or

demolition, however, may be allowed under the following situations:

...

(c) When there is a court order for eviction and demolition.

In the execution of eviction or demolition orders involving underprivileged and homeless citizens, the following shall be mandatory:

(1)

Notice upon the affected persons or entities at least thirty (30) days prior to the date of eviction or demolition;

(2)

Adequate consultations on the matter of resettlement with the duly designated representatives of the families to be resettled and the affected communities in the areas where they are to be relocated;

(3)

Presence of local government officials or their representatives during eviction or demolition;

(4)

Proper identification of all persons taking part in the demolition;

(5)

Execution of eviction or demolition only during regular office hours from Mondays to Fridays and during good weather, unless the affected families consent otherwise;

(6)

No use of heavy equipment for demolition except for structures that are permanent and of concrete materials;

(7)

Proper uniforms for members of the Philippine National Police who shall occupy the first line of law enforcement and observe proper disturbance control procedures; and

(8)

Adequate relocation, whether temporary or permanent: Provided, however, That in cases of eviction and demolition pursuant to a court order involving underprivileged and homeless citizens, relocation shall be undertaken by the local government concerned and the National Housing Authority with the assistance of other

government agencies within forty-five (45) days from service of notice of final judgment by the court, after which period the said order shall be executed: Provided, further, That should relocation not be possible within the said period, financial assistance in the amount equivalent to the prevailing minimum daily wage multiplied by sixty (60) days shall be extended to the affected families by the local government unit concerned.

...

[6] Rollo, p. 6.

[7] Supra, note 5.

[8] Rollo, pp. 108-110.

[9] Rollo, pp. 122-124.

[10] Section 19. Immediate execution of judgment; how to stay same.—If judgment is rendered against the defendant, execution shall issue immediately upon motion, unless an appeal has been perfected and the defendant to stay execution files a sufficient supersedeas bond, approved by the Municipal Trial Court and executed in favor of the plaintiff to pay the rents, damages and costs accruing down to the time of judgment appealed from, and unless, during the pendency of the appeal, he deposits with appellate court the amount of rent due from time to time under the contract, if any, as determined by the judgment of the Municipal Trial Court. . . .

All amounts so paid to the appellate court shall be deposited with said court or authorized government depository bank, and shall be held there until the final disposition of the appeal, unless the court, by agreement of the interested parties, or in the absence of reasonable grounds of opposition to a motion to withdraw, or for justifiable reasons, shall decree otherwise. Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the appellate court, upon motion of the plaintiff, and upon proof of such failure, shall order the execution of the judgment appealed from with respect to the restoration of possession, but such execution shall not be a bar to the appeal taking its course until the final disposition thereof on the merits.

After the case is decided by the Regional Trial Court, any money paid to the court by the defendant for purposes of the stay of execution shall be disposed of in accordance with the provisions of the judgment of the Regional Trial Court. In any case wherein it appears that the defendant has been deprived of the lawful possession of land or building pending the appeal by virtue of the execution of the judgment of the Municipal Trial Court, damages for such deprivation of possession and restoration of possession may be allowed the defendant in the judgment of the Regional Trial Court disposing of the appeal.

[11] *Puncia v. Gerona*, G.R. No. 107640, 29 January 1996, 252 SCRA 425, 430.

[12] *Lim v. Uni-Tan Marketing Corporation*, G.R. No. 147328, 20 February 2002, 377 SCRA 491, 499.

[13] Section 21. Immediate execution on appeal to Court of Appeals or Supreme Court.—The judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom.

[14] *Uy v. Santiago*, G.R. No. 131237, 31 July 2000, 336 SCRA 680, 685.

[15] *Heirs of Lourdes Potenciano Padilla v. Court of Appeals*, G.R. No. 147205, 10 March 2004, 425 SCRA 236, 244 citing *Metropolitan Manila Development Authority v. JANCOM Environmental Corporation*, G.R. No. 147465, 30 January 2002, 375 SCRA 320.

[16] *Vda. de Victoria v. Court of Appeals*, G.R. No. 147550, 26 January 2005, 449 SCRA 319, 333.

[17] Supra, note 15 at 246, citing Del Rosario v. Balagot, No. L-55377, 18 October 1988, 166 SCRA 429.

[18] See Jason v. Ygaña, A.M. No. RTJ-00-1543, 4 August 2000, 337 SCRA 264.

[19] Supra, note 5.

[20] Section 3. Definition of Terms.—For purposes of this Act:

...

(t) "Underprivileged and homeless citizens" refers to the beneficiaries of this Act and to individuals or families residing in urban and urbanizable areas whose income or combined household income falls within the poverty threshold as defined by the National Economic and Development Authority and who do not own housing facilities. This shall include those who live in makeshift dwelling units and do not enjoy security of tenure;

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