FAUSTO R. PREYSLER, JR., PETITIONER, VS. COURT OF APPEALS AND FAR EAST ENTERPRISES, INC., RESPONDENTS.

G.R. NO. 158141. July 11, 2006

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails the Decision[1] dated January 20, 2003 and Resolution[2] dated May 20, 2003 of the Court of Appeals in CA-G.R. SP No. 52946. The Court of Appeals lifted the amended writ of preliminary injunction dated December 29, 1998 issued by the Regional Trial Court, Branch 14 of Nasugbu, Batangas in Civil Case No. 345 and reinstated the original writ dated December 12, 1996.

The antecedent facts are as follows:

Private respondent Far East Enterprises, Inc., owns Tali Beach Subdivision. Petitioner Fausto Preysler, Jr. and his wife owned lots therein and also two parcels of land adjacent to the subdivision. These two parcels were bounded on the North and West by the China Sea and on the East and South by the subdivision. To gain access to the two parcels petitioner has to pass through private respondent's subdivision. Petitioner offered P10,000 for the easement of right of way but private respondent refused it for being grossly inadequate. Private respondent then barricaded the front gate of petitioner's property to prevent petitioner and his family from using the subdivision roads to access said parcels.

The petitioner filed, with the Regional Trial Court of Nasugbu, Batangas, a Complaint for Right of Way with prayer for preliminary prohibitive injunction against private respondent. After due hearing, the trial court, in an Order dated November 5, 1996, held that barricading the property to prevent the petitioner from entering it deprived him of his ownership rights and caused irreparable damage and injuries. It ordered herein private respondent:

> 1) To remove or cause or allow the removal of the barricade (six concrete posts) installed by it on the front gate of the plaintiffs' properties fronting Sea Cliff Drive;
>
> 2) To cease, desist and refrain from obstructing or hindering plaintiffs' entry into and exit from their subject properties and/or their free passage over Sea Cliff Drive from and to the public highway near the gate of the Tali Beach Subdivision pending termination of this litigation on the merits and/or unless a contrary order is issued henceforth.[3]

Accordingly, the writ of preliminary injunction was issued on December 12, 1996.

On July 8, 1998, petitioner used the subdivision road to transport heavy equipment and construction materials to develop his property. Consequently, private respondent moved to dissolve the writ claiming that the petitioner violated its right to peaceful possession and occupation of Tali Beach Subdivision when petitioner brought in heavy equipment and construction materials. Private respondent maintained that the damages that may be caused to it far outweigh the alleged damages sought to be prevented by the petitioner. It alleged that there is an alternate

route available to petitioner, particularly the barangay road leading to Balaytigue and the Calabarzon Road.

For his part, the petitioner moved to clarify the December 12, 1996 writ and asked the court to clearly define the action required of private respondent to avert further damage and inconvenience to petitioner. Petitioner prayed that his contractors, visitors, and other representatives be allowed access and persons he has authorized be allowed to install power lines over private respondent's property.

On December 29, 1998, the trial court issued a Joint Resolution amending the order in the original writ to read as follows:

- To remove or cause or allow the removal of the barricade (six concrete posts) installed by it on the front gate of the plaintiffs' properties fronting Sea Cliff Drive.

- To cease, desist and refrain from obstructing or hindering plaintiffs' (including plaintiffs' visitors, guests, contractors, and other persons authorized by or acting for and/or under said plaintiffs) entry into and exit from their subject properties and/or their free passage over Sea Cliff Drive and other connecting subdivision roads, from and to the public highway near the gate of the Tali Beach Subdivision, pending the termination of this litigation on the merits and/or unless a contrary order is issued henceforth.

- To cease, desist and refrain from hindering or obstructing plaintiffs' contractors, guests, visitors and other authorized persons to bring along with them their motor vehicles, equipments, materials, supplies, machineries and other items necessary for the needs of the plaintiffs' properties.

- To cease, desist and refrain from hindering or obstructing the plaintiffs and/or persons authorized by them, to install electric power lines over the Tali Beach Subdivision for plaintiffs' electric power requirements.[4]

Private respondent filed a petition for certiorari with the Court of Appeals, which set aside the amended writ dated December 29, 1998 and reinstated the original writ dated December 12, 1996 with modification as to the amount of the bond. The petitioner moved for reconsideration, but the same was denied.

Petitioner now comes before us claiming that the Court of Appeals:

I

> ... [GRAVELY] ERRED IN FINDING AND CONCLUDING THAT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING: (1) THE JOINT RESOLUTION DATED 29 DECEMBER 1998, ... (2) THE AMENDED WRIT OF PRELIMINARY INJUNCTION (MANDATORY AND PROHIBITORY) OF EVEN DATE ... AND (3) THE ORDER DATED 8 MARCH 1999 DENYING THE MOTION FOR RECONSIDERATION TO RECONSIDER AND SET ASIDE THE JOINT RESOLUTION....
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> II
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> ... OVERSTEPPED THE BOUNDARY OF ITS AUTHORITY AND JURISDICTION IN RESOLVING FACTUAL MATTERS, HOWEVER, ERRONEOUS, COULD NOT BE REVIEWED UNDER THE EXTRAORDINARY WRIT OF CERTIORARI BUT BY ORDINARY APPEAL, INSTEAD OF CONFINING ITSELF TO DETERMINE WHETHER OR NOT THE TRIAL COURT COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING THE JOINT RESOLUTION, ... THE AMENDED WRIT OF PRELIMINARY INJUNCTION (MANDATORY AND PROHIBITORY), ... AND THE ORDER DATED 6 MARCH 1996 DENYING THE MOTION TO RECONSIDER THE JOINT RESOLUTION....
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> III
>
> ... EXCEEDED ITS JURISDICTION AND AUTHORITY IN SETTING ASIDE THE JOINT RESOLUTION,

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> ... LIFTING THE AMENDED WRIT OF PRELIMINARY INJUNCTION DATED 29 DECEMBER 1998, ... AND RESTRICTING OR LIMITING PASSAGE OVER THE TALI BEACH SUBDIVISION ROADS TO INGRESS AND EGRESS OF PETITIONER AND MEMBERS OF THE LATTER'S HOUSEHOLD IN UTTER VIOLATION OF THE LAW ON EASEMENT, IN GENERAL, AND LEGAL EASEMENT OF RIGHT OF WAY IN PARTICULAR.[5]

Simply, the issue is whether there was a legal basis for the issuance of the amended writ of injunction. Likewise, we need to resolve whether the right of passage allowed in the uncontested original writ applies not only to the petitioner and his household, but also to his visitors, contractors, construction workers, authorized persons, heavy equipment machinery, and construction materials as well as the installation of power lines.

Petitioner contends that inherent in the right of way under Article 649[6] of the New Civil Code is the right to cultivate and develop the property, which is an attribute of ownership provided under Article 428.[7] According to petitioner, the passage of heavy equipment and construction materials through the subdivision is granted by Article 656.[8] Petitioner adds that he was not seeking the right of way only for occasional visits to his property but also to develop, use and enjoy it.

Private respondent claims that what was granted in the original writ was not the easement of right of way but only the maintenance of the status quo. It maintains that from the very beginning, petitioner and his household were allowed into the subdivision only because petitioner owned several lots in the subdivision. Hence, according to private respondent, the Court of Appeals properly dissolved the amended writ as the status quo protected by the original writ did not include the passage of construction workers in petitioner's property outside the subdivision. Private respondent stresses that at the time the original writ was applied for there was no construction work yet.

Private respondent argues that its recognition of the original writ should not be construed as admitting that petitioner had a right of way; and with no easement of right of way, petitioner cannot claim other rights under the law on easement. It further contends that acts prohibited and allowed under the amended writ amounted to a premature adjudication on the merits of the main case on whether or not petitioner has a right of way, which is still pending before the trial court.

Prefatorily, we note that what was granted by the trial court was the preliminary injunction, and that the main case for right of way has not yet been settled. We have in previous cases[9] said that the objective of a writ of preliminary injunction is to preserve the status quo until the merits of the case can be fully heard. Status quo is the last actual, peaceable and uncontested situation which precedes a controversy.[10] The Court of Appeals was correct in its findings that the last actual, peaceful and uncontested situation that preceded the controversy was solely the access of petitioner and his household to his property outside the subdivision for visits and inspections. At the time the writ was applied for in 1995, there was still no construction going on in the property. It was merely raw land. The use of the subdivision roads for ingress and egress of construction workers, heavy equipment, delivery of construction materials, and installation of power lines, are clearly not part of the status quo in the original writ. Along this line, the Court of Appeals properly set aside the amended writ and reinstated the original writ.

However, under Article 656 of the New Civil Code, if the right of way is indispensable for the construction, repair, improvement, alteration or beautification of a building, a temporary easement is granted after payment of indemnity for the damage caused to the servient estate. In our view, however, "indispensable" in this instance is not to be construed literally. Great inconvenience is sufficient.[11] In the present case, the trial court found that irrespective of which route petitioner used in gaining access to his property, he has to pass private respondent's subdivision. Thus we agree that petitioner may be granted a temporary easement. This temporary easement in the original writ differs from the permanent easement of right of way now being tried in the main case.

The law provides that temporary easement is allowed only after the payment of the proper indemnity. As there are neither sufficient allegations nor established facts in the record to help this Court determine the proper amount of indemnity, it is best to remand the case to the trial court for such determination.

Additionally, we find that the installation of electric power lines is a permanent easement not covered by Article 656. Article 656 deals only with the temporary easement of passage. Neither can installation of electric power lines be subject to a preliminary injunction for it is not part of the status quo. Besides, more damage would be done to both parties if the power lines are installed only to be removed later upon a contrary judgment of the court in the main case.

WHEREFORE, the petition is PARTIALLY GRANTED.

We hereby order (a) private respondent to allow the right of passage thru the subdivision by the petitioner's visitors and guests, contractors, construction workers, heavy equipment vehicles, and delivery construction materials; and (b) petitioner to pay private respondent the indemnity therefor to be determined by the trial court. The case is hereby REMANDED to the trial court for the determination of the proper amount of indemnity for the temporary easement under Article 649.

No pronouncement as to costs.

SO ORDERED.

Carpio, (Chairman), Carpio-Morales, Tinga, and Velasco, Jr. JJ., concur.

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[1] Rollo, pp. 42-69. Penned by Associate Justice Regalado E. Maambong, with Associate Justices Delilah Vidallon-Magtolis, and Andres B. Reyes, Jr. concurring.

[2] Id. at 71-73.

[3] Id. at 107.

[4] Id. at 146-147.

[5] Id. at 21-22.

[6] Art. 649. The owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity.

x x x x

[7] Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

x x x x

[8] Art. 656. If it be indispensable for the construction, repair, improvement, alteration or beautification of a building, to carry materials through the estate of another, or to raise thereon scaffolding or other objects necessary for the work, the owner of such estate shall be obliged to permit the act, after receiving payment of the proper indemnity for the damage caused him.

[9] Cortez-Estrada v. Heirs of Domingo Samut/Antonia Samut, G.R. No. 154407, February 14, 2005, 451 SCRA 275, 288; Medina v. Greenfield Development Corporation, G.R. No. 140228, November 19, 2004, 443 SCRA

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150, 159; First Global Realty and Development Corporation v. San Agustin, G.R. No. 144499, February 19, 2002, 377 SCRA 341, 349.

[10]Los Baños Rural Bank, Inc. v. Africa, G.R. No. 143994, July 11, 2002, 384 SCRA 535, 547.

[11]E. Paras, Civil Code of the Philippines Annotated, Book II, 660 (14th ed., 1999).

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