

EDGEWATER REALTY DEVELOPMENT, INC., PETITIONER, VS. METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM AND MANILA WATER COMPANY, INC., RESPONDENTS.

G.R. No. 170446. March 23, 2011

Ponente: ABAD, J.

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ABAD, J.:

This case is about the demand of a landowner, on whose land a large number of informal settlers have lived, to compel the water utility company to discontinue providing water to such settlers.

The Facts and the Case

Edgewater Realty Development, Inc., (ERDI) a realty company, owned several parcels of land in Tumana, Concepcion, Marikina City.[1] ERDI filed a complaint for ejectment against about 200 informal settlers that then occupied portions of its land but, despite a final court decision evicting them, the settlers refused to leave.

To resolve the problem, on April 14, 1994 ERDI and the Municipality of Marikina executed a Memorandum of Agreement (MOA), identifying one of ERDI's own properties[2] as an emergency relocation site.[3] The agreement resulted in the taking of additional settlers (estimated around 3,500) at the site and the placing of improvements in it. In turn, the settlers were to buy the land from ERDI. But because of the inability of the Municipality to control the influx of settlers and its breach of several other provisions of the MOA, ERDI rescinded the same and filed an action before the Marikina Regional Trial Court (RTC) for confirmation of the rescission of the MOA and for injunction against the Municipality, its Mayor Bayani M. Fernando, the Marikina Settlement Office, and Harry Singh.[4]

On August 5, 1997 the RTC rendered a decision, confirming the rescission of the MOA and ordering the Municipality to remove all structures, constructions, and projects that it introduced on ERDI's property and to pay damages. Subsequently, the RTC decision was affirmed by the Court of Appeals (CA)[5] and later by the Supreme Court.[6]

On May 7, 1998 the MTC which tried the ejectment case[7] issued a break-open and demolition order in the case and appointed a Special Sheriff to implement the order. The ERDI also applied for a writ of execution of the August 5, 1997 RTC decision.

Meantime, ERDI noticed that the settlers had maintained several facilities on its property, including a water system, without its consent. On September 13, 1995 it wrote the Metropolitan Waterworks and Sewerage System (MWSS) a letter to formalize a water distribution system in the area but asked that it hold actual implementation of such system until an agreement was signed. To ERDI's dismay, however, it received information that some of the settlers already have water connections while the others had pending application for theirs.

Consequently, ERDI filed a complaint for injunction with prayer for temporary restraining order (TRO) and preliminary injunction against MWSS before the RTC of Quezon City,[8] praying that it order MWSS to

disconnect all water connections in ERDI's properties and to refrain from putting in place any further connections without its prior consent. The RTC issued a TRO against MWSS and, after due hearing, issued a writ of preliminary injunction restraining it from installing water connections on ERDI's properties.

In its Answer with counterclaims, MWSS averred that ERDI had no cause of action against it since it provided connections to some of the occupants only after the Municipality issued clearances to them through the Marikina Settlement Office. But, from the time it received ERDI's letter in September 1995, MWSS stopped processing applications for service connection in the area.

On January 15, 1998 the Quezon City RTC issued a Pre-Trial Order, detailing the issues it needed to resolve as follows: (1) whether or not the existing water connections within the properties of ERDI were illegal, and if so, whether MWSS has an obligation to remove or disconnect them; (2) whether or not MWSS may be enjoined from supplying water into the properties without ERDI's consent; (3) whether or not ERDI is entitled to the reliefs it asked in its complaint; and (4) whether or not MWSS is entitled to the reliefs it asked in its counterclaim.

Subsequently, ERDI amended its complaint to join Manila Water Company, Inc. (MWCI) as additional party defendant based on the concession agreement between the latter company and MWSS, which gave MWCI the sole right to manage and operate the MWSS water facilities in Marikina, including those in ERDI properties. The RTC allowed the amendment and the inclusion of MWCI in the coverage of the preliminary injunction.

Answering the amended complaint, MWCI denied that it installed a water system in the area. After it assumed operations, the settlers got clearances from the Marikina City Government and so MWCI allowed them to apply for the registration of their illegal connections. But, on receipt of ERDI's letter of July 9, 1998, MWCI stopped accepting applications for such registration and placed on hold those that it had already accepted.

On January 15, 2001 the Quezon City RTC rendered judgment, declaring the water connections on ERDI's land illegal and permanently enjoined MWSS and MWCI from installing water connections on it. The RTC did not, however, order the removal of existing water connections, pointing out that ERDI's remedy was to await the eviction of the settlers pursuant to the decision in the ejectment case. While the RTC dismissed MWSS's counterclaim, it allowed MWCI to collect payment of water bills by settlers who had existing water connections prior to the court's issuance of the writ of preliminary injunction in the case.

Dissatisfied with the decision, ERDI appealed from it to the CA.[9] ERDI additionally argued that both MWSS and MWCI have the authority under Republic Act (R.A.) 8041[10] to remove illegal connections. On June 27, 2005 the CA rendered judgment, affirming the decision of the RTC, hence the present petition for review.

The Issues Presented

The case presents the following issues:

1. Whether or not the CA erred in failing to rule that MWSS and MWCI can be compelled to dismantle existing water connections on ERDI's land that was occupied by informal settlers; and
2. Whether or not MWCI can collect payment of bills for water connections on that land.

The Court's Rulings

One. ERDI invokes the provisions of R.A. 8041 as cause for rendering a decision in its favor which would require MWSS and MWCI to disconnect all existing water service on ERDI's property. But fair play dictates that matters, which ERDI did not raise in its complaint, are not allowed to be raised for the first time on appeal.[11] Here, the Court cannot entertain ERDI's new cause of action based on its alleged right under the provisions of R.A. 8041 since it is only in the course of its appeal to the CA that ERDI brought up the matter.

Besides, assuming that ERDI could still invoke in its favor the provisions of R.A. 8041, its claim must still fail. The water connections ERDI complained of are not the "illegal connections" subject of R.A. 8041.[12] In ERDI's case, those water connections were either a) installed by MWSS or MWCI and, therefore, cannot be regarded as illegal or b) illegally installed by the settlers themselves but were subsequently ratified by the water utility company. To be considered illegal under the purview of R.A. 8041, the water connections must be unauthorized by the water utility company, not by any other entity.

Nor can ERDI invoke the charter of MWSS[13] as source of its right to compel MWSS or MWCI to remove the existing connections. The rights and the remedies for removal of illegal connections under that charter belong to the water utilities, not to ERDI.

The Court is not unmindful of its December 2, 1998 resolution in G.R. 135727 that affirmed the rescission of the MOA between ERDI and the Marikina government. Before its rescission, the MOA authorized the Marikina government to lay ground works for infrastructures such as lights and other amenities of community life.[14] Undoubtedly, it was this provision of the MOA that opened the way for settlers to apply with the MWSS for water connections. While the witness for ERDI testified that he did not know when the construction of the water lines began, it may be assumed that the same took place during the time the MOA was still in force.[15] No evidence has been presented to show that the water system on ERDI's land was put in place during the pendency of the earlier ejectment case. Consequently, it cannot be said that the water connections were illegal from the beginning.

True, the MOA has been rescinded by final judgment but the obligation to remove the water connections fell upon the Marikina government, not upon respondent water utilities who were not parties to the earlier case. For this reason, ERDI's remedy is to have the final judgments of the Marikina MTC in Civil Case 92-5592 and the Quezon City RTC in Civil Case Q-96-28338 executed, not only for the eviction of the settlers but also for the eventual removal of all structures, constructions, and projects that the Marikina government introduced or allowed to be introduced in the place.

ERDI claims that the RTC and the CA's rulings, which allowed water service to illegal settlers to continue, are acts of cowardice in the face of the need to enforce its right as owner of the land to disallow such service. But as ERDI knows, the problem is not that easy. Its land has become a colony of thousands of informal settlers who have nowhere to go, posing a serious social problem. ERDI is not exactly blameless for this result. It ought to know that empty lands in places like Marikina are susceptible to the entry of such settlers and that both the national and local governments have difficulty in preventing squatting. Consequently, ERDI has itself to blame for letting the problem deteriorate. It was of course generous of ERDI to enter into the MOA with the Marikina government but it failed to exercise adequate prudence and care to prevent the agreement from being overwhelmed by the uncontrolled surge of settlers.

The task of evicting the large number of settlers from its land belongs to ERDI with the assistance of the authorities. It had obtained final judgment in its favor against the initial group of settlers that occupied the same. Still, ERDI had been unable to use these judgments, no doubt because it frowned on the terrible violence and human sufferings that such would cause. Surely, ERDI would not be justified in using MWSS and MWCI as tool for depriving the people on its land of the water they need for drinking, washing, and sanitation, subjecting them to the diseases that absence or shortage of water would cause, considering that the water connections were installed lawfully when the MOA was still in effect.

Two. ERDI contends that MWCI should not be allowed to collect payments for the water bills of its customers on ERDI's land. But, having ruled that MWSS and MWCI put the water service in place on that land for certain customers there when this was still permitted, there is no valid reason for such water service to be severed before

the informal settlers concerned are properly evicted. And if it is not severed, it would be unreasonable to prevent MWCI from collecting from its customers the cost of its service.

WHEREFORE, the Court DENIES the petition and AFFIRMS the Decision of the Court of Appeals in CA-G.R. CV 69925 dated June 27, 2005.

SO ORDERED.

Carpio, (Chairperson), Nachura, Brion,[*] and Peralta, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order 975 dated March 21, 2011.

[1] Covered by TCTs 469922, 56860, 24436, 24437, 2977 and 34848.

[2] Property covered by TCT 24437.

[3] Sangguniang Bayan ng Marikina Resolution 49, Series of 1996, records, pp. 276-277; Sangguniang Bayan ng Marikina Ordinance 58, Series of 1994, id. at 278 -281; and Sangguniang Bayan ng Marikina Resolution 38, Series of 1994, id. at 282-283.

[4] Docketed as Civil Case Q-96-28338, raffled to RTC Quezon City, Branch 98.

[5] Docketed as CA-G.R. SP 47711, decided on September 28, 1998.

[6] Docketed as G.R. 135727, decided on December 2, 1998. Motion for reconsideration was denied per resolution dated April 12, 1999.

[7] Docketed as Civil Case 92-5592, MTC Marikina, Branch 76.

[8] Branch 82; docketed as Civil Case Q-96-28405.

[9] Docketed as CA-G.R. CV 69925.

[10] "An Act to Address the National Water Crisis and for other Purposes."

[11] *Orosa v. Court of Appeals*, 386 Phil. 94, 103 (2000).

[12] See Sections 8 and 9 of R.A. 8041.

[13] Republic Act 6234, as amended.

[14] Decision dated August 5, 1997, Exhibit "H" for ERDI, records, p. 244.

[15] Rules of Court, Rule 131, Sec. 3(q) & (ff).

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