

THE NATIONAL HOUSING AUTHORITY, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND GAVINO MENDIOLA, RESPONDENTS.

G.R. No. 50877. April 28, 1983

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a petition by the National Housing Authority (formerly People's Homesite and Housing Corporation) to review the Decision of the Court of Appeals in CA-G. R. No. 42115-R affirming the judgment of the Court of First Instance of Rizal, Branch V, Quezon City, in favor of Gavino Mendiola, private respondent herein.

On November 13, 1964, the People's Homesite and Housing Corporation (PHHC for short), owner of Lot 20-A, Block E-74, Central Bank Subdivision, Quezon City, evidenced by Transfer Certificate of Title No. 66994, filed a complaint for recovery of possession and damages against Gavino Mendiola (MENDIOLA for short), alleging that without its knowledge and consent MENDIOLA had unlawfully occupied the said lot with an area of approximately 250 square meters, on December 23, 1959, constructed a house thereon, and had refused to vacate the premises and to remove the improvements despite demands to do so.

In answer, MENDIOLA admits the ownership of PHHC over the lot in question and the receipt of notice to vacate, but denied that he is unlawfully occupying the same, claiming that PHHC had caused the transfer of his house to the lot and approved the sale of Lot 20-A, Block E-74 to him; and that thereafter PHHC without justification sold the lot to Antonio Ilustre who is not qualified to buy it. He likewise counterclaimed for damages.

At the pre-trial, the PHHC presented its evidence, all documentary exhibits (A, B, C, D, & E). Defendant MENDIOLA likewise marked his evidence (Exhibits "1-5"). Thereafter, upon agreement of the parties, the Trial Court appointed a commissioner to receive the evidence for the defendant.

The Trial Court aptly summarized the facts established, as follows:

"The evidence adduced shows that a series of petitions of the members of the East V. Luna Hospital Squatters Association, among its ranking members were the herein defendant and his wife Mercedes Mendiola, which started in 1956, reached Malacañang during the incumbency of the late President Ramon Magsaysay, and the City Council of Quezon City; that the City Council in its Resolution No. 4984, dated August 4, 1959, approved the subdivision plan of Block E-74, owned by the plaintiff, which was originally an open space, for the relocation of the said member-petitioners, resulting into Lots 1 to 20 (Exhibit '4'); that after the said subdivision of Block E-74, the plaintiff transferred, among others, the defendant and his wife Mercedes Mendiola to Lot 20, Block E-74, from their former site at the Central Bank Area (Exhibit '1'); that subsequently, the Board of Directors of the plaintiff passed Resolution No. 531, dated February 23, 1960 (Exhibit 'A') dividing each of the 20 lots into two (2) lots each, so that Lot 20 became Lot 20-A and 20-B; that Lot 20-A was awarded to the defendant, and Lot 20-B to his wife Mercedes Mendiola (Exhibit '2'); that when Mercedes Mendiola tried to pay for said two (2) lots, the plaintiff refused to accept said payment because of the Board Resolution, providing that 'the award of each lot shall be made to no less than two qualified

applicants' (Exhibit 'A'); that later, the plaintiff awarded thru a raffle held on October 1, 1960, Lot 20-A to Captain Antonio Ilustre, who paid the 10% deposit of the purchase price of the said lot (Exhibit 'D'); that in view of the conflicting claims of the defendants Gavino Mendiola and Antonio Ilustre over the award of Lot 20-A, investigations had been conducted by the plaintiff, and in a memorandum for the General Manager of the plaintiff, dated September 29, 1964, Alberto C. Guzman, Sr. Executive Assistant II and Acting Chairman of the Investigating Committee, 'recommended that the award of Lot 20-A in favor of Mr. Antonio Ilustre be sustained and that Mrs. Mendiola awardee of Lot 20-B be required by the PHHC to remove whatever construction and/or improvements she had introduced on Lot 20-A, otherwise the PHHC will take the necessary legal steps leading to her ejectment' (Exhibit 'C'); and that when the defendant refused to vacate the premises in question despite demand made by the plaintiff, the instant action has been instituted."

On March 1, 1968, the Trial Court rendered judgment against PHHC, decreeing:

"WHEREFORE, judgment is hereby rendered against the plaintiff and in favor of the defendant:

- Ordering the plaintiff to award or sell to the defendant Lot 20-A of Block E-74, East Avenue Subdivision, Quezon City;
- Ordering the plaintiff to cancel the award or sale of same lot in favor of Antonio Ilustre; and
- Ordering the plaintiff to pay the defendant the sum of P500.00 as attorney's fees, and to pay the costs of this suit."^[1]

A motion for reconsideration of the Court's Decision and the opposition to said motion were resolved in favor of MENDIOLA.

On appeal by PHHC, the Court of Appeals affirmed the Trial Court's decision. Hence, this petition for review filed by the National Housing Authority, succeeding to the powers and functions of the now defunct PHHC, by virtue of Presidential Decree No. 757 (1975).

We shall first resolve the procedural questions raised.

The contention that the Trial Court cannot delegate the reception of evidence to its Clerk of Court, citing the case of *Lim Tanhu vs. Ramolete*^[2], is not well taken. Suffice to say, for purposes of this suit, that the said case referred to reception of evidence by a Clerk of Court after declaration of defendant's default. No default is involved herein. As held in the case of *Laluan vs. Manalo*^[3], no provision of law or principle of public policy prohibits a Court from authorizing its Clerk of Court to receive the evidence of a party litigant.

What is more, in the case at bar, the parties agreed to the appointment of a commissioner, the Clerk of Court, to receive the evidence of defendant-respondent, a procedure sanctioned by the Rules of Court in Rule 33, specifically:

"SECTION 1. Reference by consent.- By written consent of both parties, filed with the clerk, the court may order any or all of the issues in a case to be referred to a commissioner to be agreed upon by the parties or to be appointed by the court. As used in these rules the word 'commissioner' includes a referee, an auditor and an examiner."

Although admittedly there was no written consent by both parties, that issue was raised only in the Court of Appeals. It was not even set up in the motion for reconsideration of the Trial Court's decision filed by PHHC. Besides, the alleged lack of written consent does not invalidate the proceedings.

"We find no cause sufficient to invalidate the proceedings had in the trial court. We note that this issue was brought up by the appellant insurance company for the first time only in its motion for reconsideration filed in the Court of Appeals. It was not raised in the trial court, where the defect could still be remedied. This

circumstance precludes ventilation of the issue of validity of the hearing at this stage; for, if such irregularity is to vitiate the proceeding, the question should have been seasonably raised, i.e., either before the parties proceeded with the hearing or before the Court handed down its ruling. It is a procedural point that can be waived by consent of the parties, express or implied.

"For the same reason, appellant cannot insist now on the annulment of the proceeding on the basis of alleged lack of written consent of the parties to the commission, or of notice of the submission of his report to the court. Furthermore, appellant has presented no proof that the clerk of court committed any mistake or abuse in the performance of the task entrusted to him, or that the trial court was not able to properly appreciate the evidence in the case because it was received by another person. If indeed there were errors at all, they would be non-prejudicial and could not justify the holding of a new trial, as urged by herein petitioner." [4]

PHHC's evidence consisted solely of documentary exhibits which were all admitted, and through counsel, it had cross-examined the two witnesses of MENDIOLA. In fact, the Commissioner's Report recommended that judgment be rendered in favor of PHHC, but the Court ruled otherwise. The error thus assigned relative to reference to a commissioner is non-prejudicial.

It is next contended that the issue of preferential right to the lot in question should not have been resolved by the Courts below as it was not raised in the pleadings. On this point, we need only cite the findings of respondent Appellate Court, which we affirm:

"As to appellant's contention in its second, third, fourth and fifth assignments of error that the court a quo likewise 'erred in resolving who, as between the appellee and Antonio Ilustre, had a better right to the subject lot and ordering it to sell the property to appellee because the issue was not even raised in the pleadings' again, We hold that the contention lacks factual basis because while it is true that the complaint filed by the PHHC was for Ejectment, appellee Mendiola, however, in his Answer averred as a special defense that appellant corporation's 'motive in filing the case against him was because it sold the lot to Ilustre, an Army Officer, who is disqualified to purchase it' (paragraph 3, Affirmative and/or Special Defenses) and because of this prayer that the PHHC be ordered to cancel the sale of the lot to Ilustre and thereafter sell the same lot to him (appellee). By such averments and prayer, appellee squarely raised the issue of who as between him and Ilustre has a better right to the subject lot, which issue the Court has to resolve." [5]

Petitioner's arguments, therefore, that judgment may not be rendered against Antonio Ilustre, a stranger who has not been impleaded in this case; that the Trial Court had no right to order petitioner to sell the lot to private respondent; and that the Trial Court should have resolved only the issue of whether petitioner has the right to recover possession, all become bereft of merit. The case should be decided in its totality, resolving all interlocking issues in order to render justice to all concerned and to end litigation once and for all.

The crux of the controversy is still whether or not the PHHC committed grave abuse of discretion in awarding Lot 20-A to Antonio Ilustre. Stated differently, as between MENDIOLA and Antonio Ilustre, who had the better claim to the lot in question?

The facts show that MENDIOLA was originally awarded and occupied the whole of Lot 20, Block E-74, Central Bank Subdivision, Quezon City, since December 23, 1959 when the PHHC itself transferred his house to that area (Exhibit "1") pursuant to a resolution that squatters in the Central Bank Subdivision, MENDIOLA among them, would be allocated lots in Block E-74. Subsequently, however, on February 23, 1960, Lot 20 of Block E-74 was subdivided into Lot 20-A and Lot 20-B. Lot 20-A was awarded to MENDIOLA and Lot 20-B to his wife, Mercedes. The family lives in a house located on Lot 20-B (Exhibit "B"). Another house and an artesian well were built by the son, Armando, on Lot 20-A. Sometime in October, 1960, the PHHC awarded Lot 20-A to Antonio Ilustre by raffle after it had already been awarded to MENDIOLA. Upon the latter's complaint, an investigation was conducted by the PHHC (Exhibit "B") to resolve MENDIOLA's claim as a prior awardee. The

PHHC ruled adversely against MENDIOLA (Exhibit "C") finding that Antonio Ilustre was a qualified awardee; that MENDIOLA was already awarded Lot 20-B on which his house is constructed and is, therefore, not entitled to Lot 20-A.

Although, ordinarily, the action of an administrative agency would not be disturbed by the judicial department[6], later developments in this case show that on March 23, 1964, even before the present suit was instituted on November 13, 1964, Antonio Ilustre, an Army Officer, had transferred his rights to a third party (p. 101, Rollo), and that Ilustre has since died.[7] Obviously, Ilustre himself had no real need for the property. On the other hand, MENDIOLA, a recognized squatter, has continuously and uninterruptedly occupied the property since 1959.

Under the circumstances, we hold that the justice and equity of the situation are with MENDIOLA. As opined by Inspector Alfredo T. Baguio, in his undated Memorandum to the PHHC General Manager, "the award to Antonio Ilustre by raffle was not satisfactorily explained and hardly bears justification." He then recommended that "Antonio Ilustre should be awarded another lot outside Block E-74" (Exhibit "5"). Indeed, pursuant to Resolution No. 531 of the PHHC Board (Exhibit "A"), the subdivision of Block E-74 (Malaya Avenue Subdivision) was intended for "squatters in the Central Bank Subdivision and Mahabang Gubat area, totalling 72". MENDIOLA was included in that original group. Antonio Ilustre, a Major, was not. He was an "outsider". Specially so, with his transferee. Moreover, the same PHHC Board Resolution "provided further that in case of transfer priority shall be given to the co-owner under equal circumstances."

WHEREFORE, the judgment under review is hereby affirmed, without pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Plana, Relova and Gutierrez, Jr., JJ., concur.
Vasquez, J., in the result.

[1] p. 25, Record on Appeal.

[2] 66 SCRA 425 (1975).

[3] 65 SCRA 494 (1975).

[4] CCC Insurance Corporation vs. Court of Appeals, 31 SCRA 264 (1970).

[5] p. 39, Rollo.

[6] Guardian vs. Encarnacion, 29 SCRA 326 (1969).

[7] p. 4, Comment, p. 49, Rollo.

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