

PHILIPPINE NATIONAL BANK, PETITIONER, VS. HON. MIDPANTAO ADIL, IN HIS CAPACITY AS PRESIDING JUDGE OF THE CFI ILOILO, BRANCH II, AND THE HEIRS OF THE LATE TEODORO MELLIZA COMPOSE...

G.R. No. 52823. November 02, 1982

Ponente: DE CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-52823/>

DE CASTRO, J.:

This is a special civil action for certiorari which seeks to annul the several injunctive orders issued by respondent judge, and praying that, instead, the writ of possession issued in favor of petitioner, as purchaser in the foreclosure sale, dated April 20, 1979, be immediately enforced.

It appears that on August 2, 1974, respondent Angelina Lobaton Melliza, for herself and as judicial administratrix of the estate of Teodoro Uy Melliza, obtained a loan from petitioner in the amount of P80,000.00 which was secured by a mortgage over two parcels of land covered by TCT Nos. 8266 and T-8267. For failure of said respondent to pay the loan on maturity, the mortgage was foreclosed extrajudicially on February 16, 1976 at which foreclosure sale, petitioner purchased the properties for P97,923.73. The properties were not redeemed within the period, hence the title over the same were consolidated in the name of petitioner, and consequently TCT Nos. T-50422 and T-50423 were issued in its name on June 26, 1978.

On April 19, 1979, petitioner filed an ex-parte petition for issuance of a writ of possession before the Court of First Instance of Iloilo, Branch II, which was granted by an order dated April 20, 1979. Upon issuance of the writ, the Deputy Sheriff served the same upon private respondents, but the latter requested for a grace period of seven (7) days to vacate the premises in question to which the Sheriff agreed. On May 8, 1979, the Sheriff returned to the premises in question and finding that private respondents are still staying in the premises and had not complied with the writ of possession, immediately ordered their ejectment. At around one o'clock in the afternoon, before the ejectment was completed, the Sheriff received an order dated May 8, 1979, issued *motu proprio* by respondent judge, suspending the implementation of the writ of possession for "humanitarian reasons" for a period of fifteen (15) days. Before the expiration of the fifteen (15) day period, private respondents filed a complaint dated May 14, 1979 for the annulment of the extrajudicial foreclosure, writ of possession and consolidation of ownership on ground that the properties were foreclosed without personal notice to any of the private respondents. The complaint was docketed as Civil Case No. 12894 and was assigned to the Court of First Instance of Iloilo, Branch V. Upon motion of private respondents "to consolidate the trial of the two cases," the Presiding Judge of said Branch, in an order dated May 24, 1979, transferred the case to Branch II, presided by respondent judge.

In the proceeding for the writ of possession, private respondents filed a motion for reconsideration of the order granting the writ of possession, while petitioner filed a motion to declare private respondents in contempt for refusal to vacate the premises, which motions were ordered by respondent judge held in abeyance pending the

resolution of the prejudicial question raised by private respondents in Civil Case No. 12894.

On June 1, 1979, respondent judge, acting on private respondents' prayer for injunction, issued an order restraining petitioner from disturbing the status quo, and on July 5, 1979, respondent judge issued an order granting the writ of preliminary injunction.

Subsequently, petitioner filed the following: 1) Motion to Require Plaintiff to Deposit Income/Fruits of the Disputed Property dated July 6, 1979; 2) Motion for Reconsideration of the order of July 5, 1979 dated July 17, 1979; and 3) Motion to Dismiss the Complaint dated August 2, 1979. The first two motions were denied by respondent judge on August 13, 1979, and the last motion, on November 22, 1979.

As could readily be seen, the main question is whether or not respondent judge gravely abused his discretion, amounting to lack of jurisdiction, in issuing the orders dated May 8, 1979, June 1, 1979, July 5, 1979 and August 13, 1979 all of which, in effect, enjoined the enforcement of the writ of possession. The petitioner sustains the affirmative, contending that since pursuant to *De los Angeles vs. Court of Appeals, et al.*[1] citing *De Gracia vs. San Jose*, 94 Phil. 675, it is ministerial upon the court to issue a writ of possession in favor of the purchaser in a foreclosure sale of a mortgaged property, it follows that the execution of the writ of possession cannot be suspended, much less, restrained by respondent judge. It also contends that, as purchaser, it becomes the owner of the property entitled to *jus possidendi* as provided in Article 428 of the Civil Code.

It is, however, claimed by private respondents that respondent judge, contrary to petitioner's submission, acted within his authority, alleging that pursuant to Section 5 of Rule 135 of the Rules of Court, the court has inherent power to "amend and control (the court's) processes and order so as to make them conformable to law and justice." They further claimed that the case cited by petitioner is not applicable because in the instant case the writ has already been issued.

Petition should be granted.

Section 4 of P.D. No. 385 "requiring government financial institution to foreclose mandatorily all loans with arrearages, including interest and charges amounting to at least 20% of the total outstanding obligation," provides:

"Section 4. As a result of foreclosure or any other legal proceedings wherein the properties of the debtor which are foreclosed, attached, or levied upon in satisfaction of a judgment are sold to a government financial institution, the said properties shall be placed in the possession and control of the financial institution concerned, with the assistance of the Armed Forces of the Philippines whenever necessary. The Petition for Writ of Possession shall be acted upon by the court within fifteen (15) days from the date of filing."

Pursuant to the above provision, it is mandatory for the court to place the government financial institution, which petitioner is, in the possession and control of the property. As stated, the said decree was enacted "in order to effect the early collection of delinquent loans from government financial institutions and enable them to continue effectively financing the development needs of the country" without being hampered by actions brought to the courts by borrowers.

Also, Section 6 of Act No. 3135, as amended by Act 4118, the law that regulates the methods affecting extrajudicial foreclosure of mortgage provides that in cases in which an extrajudicial sale is made, "redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure insofar as these are not inconsistent with the provisions of this Act." Sections 464-466 of the Code of Civil Procedure were superseded by Sections 25-27 and Section 31 of Rule 39 of the Rules of Court which in turn were replaced by Sections 29 to 31 and Section 35 of Rule 39 of the Revised Rules of Court.[2] Section 35 which is one of the specific provisions applicable to the case at bar provides that "if

no redemption be made within twelve (12) months after the sale, the purchaser, or his assignee, is entitled to a conveyance and possession of property..... The possession of the property shall be given to the purchaser or last redemptioner by the officer unless a third party is actually holding the property adversely to the judgment debtor."

The rule, therefore, is that after the redemption period has expired, the purchaser of the property has the right to be placed in possession thereof. Accordingly, it is the inescapable duty of the Sheriff to enforce the writ of possession, especially as in this case, a new title has already been issued in the name of the purchaser. In fact, under Section 7 of the said Act 3135, upon which the de los Angeles and Garcia cases were based, even before the redemption period, it is ministerial upon the court to issue a writ of possession in favor of a purchaser, provided that a proper motion has been filed, a bond approved, and no third person is involved.

The right of the purchaser to be placed in the possession of the property is bolstered by Section 8 of the aforementioned Act which provides that if the judge finds the complain assailing the legality of the foreclosure sale justified, it shall not transfer the possession of the property, even on appeal, but will only proceed against the bond posted by the purchaser, Section 8 reads:

"The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions thereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four Hundred and Ninety-Six, and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with sections fourteen of act numbered Four Hundred and Ninety-Six."

In the case at bar, the writ of possession was issued but its enforcement was suspended by the grace period given by the Sheriff who has no authority to do so, and later by the order of the judge on a very dubious ground as "humanitarian reason." If the applicable laws clearly allow the purchaser to have possession of the property foreclosed and mandate the court to give effect to such right, it would be a gross error for the judge to suspend the implementation of the writ of possession, which, as shown, should issue as a matter of course. We are of the opinion that once the writ of possession has been issued, the Court has no alternative but to enforce the writ without delay, especially as in this case, no motion for the suspension of the enforcement was filed.

The right of the petitioner to the possession of the property is clearly unassailable. It is founded on its right of ownership. As the purchaser of the properties in the foreclosure sale, and to which the respective titles thereto have already been issued, petitioner's right over the property has become absolute, vesting upon him the right of possession over an enjoyment of the property which the Court must aid in effecting its delivery. After such delivery the purchaser becomes the absolute owner of the property. As we said in *Tan Soo Huat vs. Ongwico*,^[3] the deed of conveyance entitled the purchaser to have and to hold the purchased property. This means, that the purchaser is entitled to go immediately upon the real property, and that it is the Sheriff's inescapable duty to place him in such possession.

Respondents cannot claim that the writ of possession was suspended under the authority set forth in Rule 135 of the Rules of Court. To invoke the power granted therein, the court must act within the law and with justice. When the reason given by the judge in issuing the order of suspension was not specified in the order, but stated only in general term, as "humanitarian reasons," the Court did not act within the bounds of the law. The order was, furthermore, issued *motu proprio* and without the petitioner being afforded the right to present its side. We cannot give Our approval to the actuation of the respondent judge, for an order suspending the implementation of an earlier order is like an injunction which must be issued always with circumspection, and upon proper motion of

the party concerned.

As it is, the suspension order has a far-reaching effect. It enabled private respondents to withhold the possession from petitioner and file the complaint where an injunction was sought. Had not respondent judge issued such order, petitioner could have already taken possession of the property, thereby acquiring an absolute ownership over the property, and injunction could no longer have been issued. A prohibitory injunction cannot be issued when the act sought to be enjoined has already been committed.[4] Neither can a mandatory injunction issue, for it is a well-settled rule that injunction will not lie to take the property out of control of the party in possession.[5]

The orders of the judge enjoining the enforcement of the writ of possession are vulnerable to attack. Firstly, the right of private respondents to injunctive order is, at least, doubtful, and it is a settled rule that to be entitled to the injunction, the applicant's right or title must be clear and unquestioned. In the instant case, the ground relied upon by private respondents is not indubitable, while the foreclosure proceeding has in its favor the presumption of regularity. And secondly, P.D. No. 385, as aforesaid, makes it mandatory for the court to place a government financial institution in possession of the property. To enjoin PNB from taking possession of the property would be to render nugatory the provisions of said decree, particularly Section 2 thereof:

"Section 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution in compliance with the mandatory foreclosure provided in Section 1 hereof, whether such restraining order, temporary or permanent injunction is sought by the borrower (s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings.

"In case a restraining order or injunction is issued the borrower shall nevertheless be legally obligated to liquidate the remaining balance of the arrearages, paying ten percent (10%) of the arrearages outstanding as of the time of foreclosure, plus interest and other charges, on every succeeding thirtieth (30th) day after the issuance of such restraining order or injunction until the entire arrearages have been liquidated. These shall be in addition to the payment of amortizations currently maturing. The restraining order or injunction shall automatically be dissolved should the borrower fail to make any of the above-mentioned payments on due dates, and no restraining order or injunction shall be issued thereafter. This shall be without prejudice to the exercise by the government financial institutions of such rights and/or remedies available to them under their respective charters and their respective contracts with their debtors, nor should this provision be construed as restricting the government financial institutions concerned from approving, solely at its own discretion, any restructuring, recapitalization, or any other arrangement that would place the entire account on a current basis, provided, however, that at least twenty percent (20%) of the arrearages outstanding at the time of the foreclosure is paid.

"All restraining orders and injunctions existing as of the date of this Decree on foreclosure proceedings filed by said government financial institutions shall be considered lifted unless finally resolved by the court within sixty (60) days from date hereof."

WHEREFORE, judgment is hereby rendered annulling and setting aside all the injunctive orders issued by respondent judge dated May 8, 1979, June 1, 1979, July 5, 1979 and August 13, 1979; and ordering respondent judge to place petitioner in possession of the purchased property without delay. Without cost.

SO ORDERED.

Makasiar, Concepcion Jr., Guerrero, and Escolin, JJ., concur.

Aquino, J., I concur in the result. The pendency of the case for the annulment of the extrajudicial foreclosure sale is not a ground for not enforcing the writ of possession.

Abad Santos, J., took no part.

[1] 60 SCRA 116.

[2] IFC Service Leasing and Acceptance Corporation vs. Venancio Nera, 19 SCRA 181.

[3] 63 Phil. 749.

[4] Feranil vs. Arcilla, 88 SCRA 777.

[5] Pio vs. Marcos, 56 SCRA 726.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.