

DARNOC REALTY DEVELOPMENT CORPORATION, PETITIONER, VS. AYALA CORPORATION, RESPONDENT.

G.R. No. 56624. September 30, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

This is a petition directly filed with this Court impugning the validity and constitutionality of the Deed Restriction inscribed on Transfer Certificates of Titles Nos. S-90337 and S-85260, both of the Office of the Register of Deeds of the Province of Rizal, owned by petitioner, which reads as follows:

"The building proper must have a height of not more than twenty-three (23) meters above the ground directly beneath the point in question, PROVIDED that the height of structures intended exclusively for covered parking shall be subject to approval of the VENDOR. Elevator shafts, decorative structures shall not be considered for purposes of measuring the maximum height."

The following facts are undisputed. On January 16, 1975, respondent corporation, a corporation engaged in real estate development, contracted to sell to Western Minolco Corporation Lots 12 and 13, Block 28 of Legaspi Village, a portion of this development project developed by respondent. Subsequently, Western Minolco Corporation executed a Deed of Assignment of Right to buy land over said lots in favor of herein petitioner. Accordingly, respondent executed a Deed of Absolute Sale over said lots in favor of petitioner. Lots 12 and 13 are now covered by Transfer Certificates of Title Nos. S-90337 and S-85260 in the name of petitioner. Both lots are subject to the above-mentioned restriction annotated at the back of their respective certificates of title.

Petitioner intends to construct a 22-storey office building on the two parcels of land abovementioned so it submitted to the respondent corporation amended building plans for the construction of aforesaid office building. Respondent replied claiming that the height of the building to be constructed by petitioner exceeds the maximum limitation for Legaspi Village by sixty-two (62) meters and would not approve the same unless further amended to conform with the height of not more than twenty-three (23) meters above the ground.

Petitioner now comes directly to this Court to declare the above-mentioned height restriction unconstitutional and to direct respondent to allow the construction of a 22-storey building on the two (2) parcels of land in question. It further alleged that the restriction imposed by respondent is a capricious exercise of an alleged "right" which respondent does not possess after it ceased to be owner of the land and that it clearly infringes the constitutional guarantee in the use and enjoyment of his property by a private individual.

In its comment and Answer, respondent alleged that the restriction forms part of the terms and conditions of the respective deeds of sale concerning Lots 12 and 13 and as such must necessarily be binding upon the petitioner. It further argued that the case is improperly filed in this Court, the action being one falling within the original jurisdiction of the Court of First Instance.

We decline to resolve the case on its merits. For We are in full accord with respondent that this Court has no

jurisdiction over the instant case. Noteworthy is the fact that without filing any case in the lower court, petitioner went directly to this Court and alleged that the instant case is one that falls within the concurrent jurisdiction of this Court with the Court of First Instance. This is patently erroneous. Jurisdiction of a court over the subject matter of an action is conferred only by the Constitution or by law. It cannot be fixed by the will of the parties.[1] Both the Constitution and the Judiciary Act of 1948 shows that this Court has no jurisdiction over the instant case. The Constitution expressly provides that the Supreme Court shall have the power to review and revise, reverse, modify or affirm on appeal or certiorari final judgments and decrees of inferior courts in all cases enumerated therein.[2] Thus, there has to be a judgment rendered by an inferior court, which as stated, is absent in the instant case. Neither does this case involves the constitutionality or validity of any treaty, executive agreement, law, ordinance or executive order or regulation. While the Judiciary Act of 1948 expressly provides that the Supreme Court shall exercise concurrent jurisdiction with Court of First Instance in petitions for the issuance of writs of certiorari, prohibition, mandamus, quo warranto and habeas corpus,[3] petitioner has not shown that it is entitled to any of the writs men-tioned above.

Petitioner's petition is principally to nullify the contractual provision in the Deed of Sale covering the two (2) lots subject of the case and to direct respondent to allow the construction of a twenty-two (22) storey office building on said lots. Certiorari, thus, may not be availed of by petitioner since this special civil action may be availed of only when any tribunal, board or officer exercising judicial functions has acted without or in excess of its or his jurisdiction or with grave abuse of discretion, thereby praying that the proceedings of such tribunal, board or officer be annulled or modified. (Section 1, Rule 65, Rules of Court). Mandamus is likewise not a proper remedy for this remedy refers only to acts enjoined by law to be done. (Section 3, Rule 65, Rules of Court). Contractual duties are outside the scope of the writ, hence it does not lie to compel the performance of a contractual duty.[4] Neither is prohibition applicable since this remedy may be availed of only when the proceedings of any tribunal, corporation, board or person, exercising function judicial or ministerial are without or in excess of its or his jurisdiction or with grave abuse of discretion, thereby praying that judgment be rendered commanding defendant to desist from further proceeding in the matter specified therein. (Section 2, Rule 65, Rules of Court).

Inasmuch as this petition is principally to nullify a provision in the Deed of Sale covering the subject lots and to direct respondent to allow the construction of a 22-storey office building on said lots, the action, therefore, falls within the original jurisdiction of the Court of First Instance.[5] Petitioner's contention that any way if the case is filed with the Court of First Instance the case will eventually be appealed to the Supreme Court is not a justification for filing this case directly with the Supreme Court. As aptly stated by respondent, "the havoc that will be wrought on judicial procedure can be imagined if any party will be allowed to file directly with the Supreme Court any case that should be filed with the Court of First Instance but which may be appealable to the Supreme Court.[6]

WHEREFORE, the Resolution giving due course to the petition is hereby set aside and the instant petition is hereby dismissed for lack of jurisdiction.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Guerrero, Abad Santos, and Escolin, JJ., concur.
Aquino, J., see concurrence below.

[1] De Jesus vs. Garcia, 19 SCRA 554 citing Molina vs. De la Rive, 6 Phil. 12; Manila Railroad Company vs. Attorney-General, 20 Phil. 523.

[2] Section 5, Article X, 1973 Constitution.

[3] Section 17, Judiciary Act of 1948, as amended.

[4] Quioque vs. Del Rosario, 46 Phil. 337.

[5] Section 44, Judiciary Act of 1948, as amended.

[6] p. 60, Rollo.

CONCURRING OPINION

AQUINO, J.:

I concur. Petitioner's action is for declaratory relief. This Court has no original jurisdiction to grant declaratory relief, a special civil action governed by Rule 64 of the Rules of Court. (See sec. 17 of Judiciary Law).

That special civil action falls within the original jurisdiction of the Court of First Instance. See section 44(e) of the Judiciary Law. See also *Ortigas & Co., Ltd. vs. Feati Bank and Trust Co.*, 94 SCRA 533 as to the construction of a commercial building in a subdivision where the contract of sale provides that only residential buildings may be constructed and such restriction is annotated on the title.

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