

**SEARTH COMMODITIES CORPORATION, ARACELI CAMACHO,
PROSPERO CASTRO AND MANUEL TARROJA, PETITIONERS, VS.
COURT OF APPEALS AND DEVELOPMENT BANK OF THE
PHILIPPINES, RESPONDENTS.**

G.R. No. 64220. March 31, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This petition for review seeks to set aside the resolutions dated April 13, 1983 and May 23, 1983 promulgated by the respondent Court of Appeals which upheld the trial court's denial of the petitioners' prayer for the issuance of a preliminary injunction in Civil Case No. 39128.

On May 17, 1972, petitioner Searth Commodities, Inc. (Searth) borrowed from respondent Development Bank of the Philippines (DBP) the amount of Three Hundred Seventy Thousand Pesos (P370,000) to finance the former's hybrid tomato plantation in Tubao, La Union.

As security for the loan, Searth gave the following collateral:

- a) a 60-hectare (52 hectares, according to DBP) agricultural land in Tubao, La Union;
- b) farm machinery;
- c) a 200-square meter residential lot and house in Manila in the name of petitioner Araceli Camacho;
- d) a 406-square meter residential lot and house in Quezon City in the name of petitioner Prospero Castro; and
- e) a 439-square meter residential lot and house in Quezon City in the name of petitioner Manuel Tarroja.

The petitioners allege that in June 1972, a series of floods and typhoons hit Luzon and destroyed the plantation. Then, on October 21, 1972, the President of the Philippines issued Presidential Decree (P.D.) No. 27 proclaiming the entire country as a land reform area.

According to the petitioners, as a result of said proclamation the farmers took possession of the 60-hectare agricultural lot and staked ownership in said land, paralyzing Searth's operations.

In 1974, due to Searth's failure to pay its agricultural loan, DBP foreclosed the real estate and chattel mortgages executed by Searth. None of the petitioners redeemed the properties. Title to the foreclosed properties were thereafter consolidated in the name of DBP.

On October 27, 1980, DBP advertised to sell some of its acquired assets, including the aforementioned residential properties previously owned by petitioners Camacho, Castro and Tarroja, respectively.

On October 30, 1980, the petitioners filed Civil Case No. 39128 before Branch II, Court of First Instance (now Regional Trial Court) of Rizal for annulment of real estate mortgages and foreclosure sale. The petitioners

likewise prayed for the issuance of a writ of preliminary injunction to enjoin the sale of the residential properties.

The petitioners' complaint alleged that the foreclosure sale was null and void because its publication was not in accordance with the requirements of law. (Rollo, p. 38) It charged that the real estate mortgages were voidable because the interest stipulated was usurious. Moreover, the complaint stressed that DBP's loan to the petitioner company was oversecured since the values of the foreclosed farm machinery and the expropriated farm land were, at the time of foreclosure, more than sufficient to completely pay off the DBP loan and therefore DBP should not have foreclosed the other properties belonging to the individual petitioners.

On March 30, 1982, Judge Rizalina Bonifacio-Vera issued an order restraining the bidding of the individual properties of the petitioners.

After the expiration of the restraining order on May 3, 1982, the petitioners moved for its extension.

On July 27, 1982, Judge Josue Bellosillo, to whom the case was transferred, issued an order dissolving the restraining order and denying the motion for its extension. Judge Bellosillo cited the provisions of Section 2 of P.D. No. 385 which reads:

"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 x x x."

The petitioners sought a motion for reconsideration of said order which was denied by Judge Bellosillo in an order dated November 13, 1982 prompting the former to file a petition for certiorari with the respondent Court of Appeals to annul his orders. The petitioners claimed that Judge Bellosillo gravely abused his discretion in denying their prayer for the issuance of a preliminary injunction because P.D. No. 385 is not applicable to them.

Finding no merit in the petition, the appellate court, on April 13, 1983, held:

x x x x x x x x

"That contention is not meritorious. P.D. No. 385 is quite clear: No restraining order or injunction may issue against the DBP which is a government financial institution to stop it from foreclosing the collaterals of the borrowers of said bank.

"While, strictly speaking, the DBP's advertisement of its plan to dispose of its acquired assets is not a foreclosure, it is, for all intents and purposes a continuation of the proceedings to obtain satisfaction of the loan which DBP granted to the petitioners.

"Since P.D. No. 385 restrains the courts from interfering by injunction with the efforts of government financial institutions like the DBP to collect the loans they had given out, respondent Judge may not be faulted for obeying the law.

"Another reason why the petition must fail is that the petitioners have an adequate remedy for the protection of their interests in the foreclosed properties. Instead of a restraining order, they can register a notice of lis pendens on the DBP's titles to the properties in question, and thereby bind any prospective buyer to the outcome of Civil Case No. 39128." (Rollo, p. 51)

The respondent court likewise denied the petitioner's motion for reconsideration in a resolution dated May 23, 1983.

The petitioners now come to this Court alleging that the appellate court committed the following errors:

A

RESPONDENT APPELLATE COURT ERRED IN HOLDING THAT THE SALE OF THE ADDITIONAL COLLATERALS CANNOT BE ENJOINED PENDING HEARING ON THE MERITS DESPITE THE FACT THAT:

1. The balance of the loan is only P17,858.00 and the additional collaterals sought to be sold are valued at P950,000.00;
2. The petitioners are willing to settle the balance of the loan.

B

RESPONDENT APPELLATE COURT ERRED IN HOLDING THAT THE AFORESAID SALE CANNOT BE ENJOINED PURSUANT TO PRESIDENTIAL DECREE NO. 385 DESPITE THE FACT THAT:

1. The said Decree applies only to malicious, deliberate and delinquent failure to pay amortizations of loan secured from government financial institutions;
2. The said Decree applies only to large borrowers who have accumulated large arrearages;

C

RESPONDENT APPELLATE COURT ERRED IN DENYING THE EQUITABLE RELIEF OF INJUNCTION DESPITE THE FACT THAT:

1. The sale of the aforesaid collaterals would render moot and academic the action below for the nullity of the foreclosure;
2. No prejudice shall be suffered by respondent DBP since the subject collaterals remain intact and in the possession of respondent DBP." (Rollo, 15-16)

On June 29, 1983, the Court issued a temporary restraining order enjoining the respondents from enforcing the challenged resolution of the Court of Appeals dated April 13, 1983 and May 23, 1983. (Rollo, p. 66)

Before acting on the merits of the petition, we first emphasize that the only question before us is whether or not we should direct the issuance of a writ of injunction stopping the sale of three residential properties.

We stress this because the main argument of the petitioners may be proper for the annulment of mortgages and foreclosure sale case but not this petition involving a writ of injunction.

According to the petitioners from a loan of only P370,000.00, they have already been deprived of 60 hectares of agricultural land and the farm machinery for the tomato plantation. The irrigation ditches, water reservoir for 37 million gallons, plastic greenhouses, insecticides and fertilizers (not to mention tomatoes already planted) constructed or purchased out of the loan were all washed away by typhoons and floods. To top their problems, the Government refused to grant a calamity loan to the company but, instead, expropriated the 60 hectares for land reform purposes. At the time of the expropriation, land was allegedly already selling for P20,000.00 a hectare or P1,200,000.00 for the entire lot.

The petitioners claim to have liquidated their obligations as follows:

Amount Released - P370,000.00

Date of First Release - May 17, 1972

Rate of Interest - 12% per annum

Date of Land Reform

Expropriation - December 1972

Date of Sale of Chattel - October 28, 1974

(Farm machineries & Equipment)

Principal Amount - P370,000.00

Add: Interest from May 17,

1972 to Dec. 31, 1972

129 x P121.65/day - 27,858.00

P397,858.00

Less: Expropriation price

of Agricultural land

through Land Reform - 260,000.00

137,858.00

Less: Sale of Chattel

(Machineries &

Equipments) - 120,000.00

Balance of Loan - P 17,858.00

(Rollo, p. 19)

The petitioners assert that it is illegal and inequitable to deprive them of their three residences since they are willing to pay the balance of the loan. DBP asserts that the balance as of 1982 was P1,178,557.99. The records of this petition do not indicate how the loan escalated to that amount after the taking over of the 60 hectares of land. However, the above issues are for the main cancellation case, Civil Case 39128, and not the present petition.

As a general rule, the grant or denial of an injunction rests on the sound discretion of the lower court in the exercise of which this Court will not intervene except in a clear case of abuse. (See *S & A Gaisano Incorporated v. Hidalgo*, 192 SCRA 224 [1990]; *Genoblazo v. Court of Appeals*, 174 SCRA 124 [1989]; *Detective and Protective Bureau, Inc. v. Cloribel*, 26 SCRA 255 [1968]; and *North Negros Sugar Co., Inc. v. Hidalgo*, 63 Phil. 664 [1936]).

For the petitioners to be entitled to the injunctive writ, they must show that there exists a right to be protected and that the facts against which injunction is directed are violative of said right. (See *Viray v. Court of Appeals*, 191 SCRA 308 [1990]; *National Power Corporation v. Vera*, 170 SCRA 721 [1989]; *Araneta v. Gatmaitan*, 101 Phil.

328 [1957]; and *North Negros Sugar Company v. Hidalgo*, *supra*).

The records show that the affected properties were foreclosed way back in 1974 and that the petitioners failed to redeem said properties. Even after the expiration of the period for redemption, the petitioners were, as late as December 6, 1976, given by respondent DBP a chance to redeem the properties. (See *Rollo*, p. 102) The petitioners were not able to redeem the three properties despite their avowed declaration that the remaining loan balance was only P17,858.00. They do not dispute that titles to these properties have already been consolidated in DBP's name. The exchange of correspondence between the petitioners and respondent DBP show that the former acknowledged DBP's ownership over these assets. (See *Rollo*, pp. 99-101) For several years, they did not question the validity of the real estate mortgages and foreclosure sale. It was only in 1980 or six years after the foreclosure sale, when the petitioners read DBP's newspaper advertisement to sell the three properties, that they filed a case for annulment of real estate mortgage and foreclosure sale.

With the foregoing consideration, we find that the petitioners failed to show that they have an existing right to be protected. The petitioners cannot cite nor assert equity since by their own inaction they have forfeited the right to invoke such remedy.

The petitioners' main argument pointing to the invalidity of the foreclosure sale, which would justify the issuance of the injunction, is their allegation that at the time of foreclosure the remaining balance of the loan incurred by petitioner Searth is only P17,858.00 whereas the three residential properties foreclosed by DBP to satisfy this balance are valued at P950,000.00. DBP, however, controverts this assertion and maintains that even after the foreclosure of the abovementioned properties, DBP's total claim against the petitioners as of September 13, 1982 is P1,178,557.99. DBP further posits that even assuming that the values of these properties have increased to P950,000.00 at the time of the filing of this petition, it has the legal right as absolute owner to sell the same, having acquired them way back in 1974 as the highest bidder.

The resolution of the foregoing conflicting claims involves a factual determination which is not the function of this Court. The ascertainment of the actual loan balance is more within the competency of the lower court before whom the petitioners have raised the very same issue in the main case for annulment of real estate mortgages and foreclosure sale. Furthermore, while the petitioners claim that the foreclosed properties are in the possession of DBP, the latter maintains otherwise. These are divergent statements the truth or falsity of which may be confirmed not by this Court but by the trial court during the hearing on the merits of the main case.

The prevailing rule is that courts should avoid issuing a writ of preliminary injunction which would in effect dispose of the main case without trial. (*Rivas v. Securities and Exchange Commission*, 190 SCRA 295 [1990]; *Government Service and Insurance System v. Florendo*, 178 SCRA 76 [1989]; and *Ortigas v. Co. Ltd. Partnership v. Court of Appeals*, 162 SCRA 165 [1988]) In the case at bar, if the lower court issued the desired writ to enjoin the sale of the properties premised on the aforementioned justification of the petitioners, the issuance of the writ would be a virtual acceptance of their claim that the foreclosure sale is null and void. (See *Ortigas and Co., Ltd. Partnership v. Court of Appeals*, *supra*). There would in effect be a prejudgment of the main case and a reversal of the rule on the burden of proof since it would assume the proposition which the petitioners are inceptively bound to prove. (*Id.*)

Moreover, the object of the writ is to preserve the status quo, which is the last actual peaceable uncontested status that preceded the pending controversy. (*Rivas v. Securities and Exchange Commission*, *supra*; *Bengzon v. Court of Appeals*, 161 SCRA 745 [1988]; *Rodulfa v. Alonso*, 76 Phil. 225 [1946]) The last actual peaceable uncontested status that preceded the controversy is that DBP is the owner of the properties in dispute, the petitioners having failed to redeem them and DBP having consolidated its title thereto. As owner of these properties, DBP has every

right to dispose of them. The issuance of the writ would no doubt upset, not preserve, the status quo.

We agree with the pronouncement of respondent Court of Appeals that the petitioners have an adequate remedy for the protection of whatever interest they may still have over the disputed properties. Instead of securing an injunctive writ, they can register a notice of lis pendens over DBP's titles to the properties which notice will bind any prospective buyer to the outcome of the civil case pending before the trial court. The buyer purchases the lots with peril that he may be deprived of what he purchased should the main case be decided in favor of the petitioners.

We cannot, however, sustain the two lower courts' declaration that P.D. No. 385 is applicable to the instant case. The prohibition found in P.D. No. 385 against the issuance of injunctions by lower courts, unless certain conditions are met, applies only to foreclosure proceedings initiated by government financial institutions like the DBP. The Court of Appeals reasoned that the sale by DBP of these residential properties is "for all intents and purposes, a continuation of the foreclosure proceedings to obtain satisfaction of the loan which DBP granted to the petitioners." To our mind, the sale of these assets cannot be considered a continuation of the foreclosure proceedings since the foreclosure sale had long been *fait accompli* and title to these properties had already been consolidated in DBP's name. The sale by the DBP of its acquired assets cannot anymore be viewed as a satisfaction of the petitioners' unpaid loan but as an exercise of DBP's right of ownership over these properties. At any rate, we still hold that despite the inapplicability of P.D. No. 385 to the present case, injunction may not issue for the reasons previously discussed.

WHEREFORE, the petition is hereby dismissed. The temporary restraining order issued by this Court on June 29, 1983 is lifted.

Bidin, Davide, Jr., and Romero, JJ., concur.

Feliciano, J., on leave.

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