

**MILAGROS ROSAURO, ROLANDO EBLAMO, SALVADOR SARSONAS,
BASILIA ARABI, JOHNNY MEJIA, AURORA POLISTICO, EDGARDO
PONCE, FLORENCIO YJAN, FEDERICO LAGAR, ANTONIO AGNAS,
REMEDIOS YJAN A...**

G.R. No. 69854. June 30, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

In a petition for prohibition, injunction with prayer for preliminary injunction/restraining order petitioners who are officers and members of "Pargal Samahang Magkakapitbahay Inc.," allege that they have been in possession for almost 10 to 15 years of Lot 12, Cad. 259, Pasay Cadastre having constructed their houses thereon; that the same is patrimonial property as evidenced by the investigation report of Romero T. Salbado dated December 18, 1984 of the Bureau of Lands and the technical description signed by Felipe Venezuela, Chief Technical and Service Section[1] of same Bureau; that they filed their application with the Bureau of Lands for its allocation to them through their association aforesaid, which application was duly published; that said lot is not owned by any private individual, more particularly by respondent Hon. Pablo Cuneta or the Pasay City Government;[2] that on December 18, 1984 Salbado recommended allocation of said lot to petitioners;[3] that respondent Mayor Cuneta accompanied by several armed men, suddenly entered said lot accompanied by the demolition squad from the engineering's office of the city government, and without due process and legal basis, respondent partially caused the demolition of some of the houses of petitioners; that respondent is set in forcibly dispossessing petitioners of said lot, and if unrestrained will continue in said unlawful act in grave abuse of discretion which will cause irreparable injury to petitioners; and that they have no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. Hence petitioners pray among others that a restraining order issue to restrain respondent from performing any act tending to dispossess petitioners of the lot in question; after hearing issue a writ of preliminary injunction; that judgment be rendered prohibiting permanently respondent mayor from so dispossessing petitioners of the said lot and further pray for any relief or remedy deemed just and equitable under the law.

In a resolution of February 18, 1985 the Court required respondent to comment on the petition within ten (10) days from notice and issued a temporary restraining order enjoining respondent from committing, doing or performing any act as well as to cause the commission, doing and/or performing of any act which may tend to dispossess petitioners of the lot in question.

In the comment filed by respondent he asserted that he is the owner of said lot having purchased the same on September 12, 1984 from its registered owner Bombay Merchant Association Inc., covered by Transfer Certificate of Title No. 3454 (32057);[4] that under said title its Spanish technical description is Lot No. 18, but the same has been certified to be same as the technical description of Lot 12, Cad. - 259 by Mr. Felipe R. Venezuela, Chief of Technical Services Section of the Bureau of Lands[5] and the certification of Mr. Isaias S. Cepe, Acting Chief, Surveys Division of the Bureau[6] so that the investigation report of Mr. Salbado is without

basis and cannot defeat the property rights of respondent; respondent denies the alleged possession of petitioners of 10 to 15 years of the lot the truth being it is the predecessor of respondent who had been in possession thereof and it was only recently when petitioners who had residential houses located at the adjoining lot and outside the perimeter of the fence of the said lot of respondent forcibly and illegally constructed several shanties thereon; that said anomalous act of petitioners cannot render nugatory the title of respondent to said private property; that when respondent learned petitioners have destroyed the perimeter fence of his property and were making illegal constructions thereon he immediately referred the matter to the City Engineer's Office for appropriate action so said office acted to prevent such illegal construction[7] by demolishing said shanties in accordance with Letter of Instruction No. 19; that petitioners in the guise of being harassed by respondent proposed to deprive respondent of his private property whereon they squatted; that petitioners are facing two (2) charges for violation of P.D 77 (Anti Squatting Law) and of malicious mischief; and that the issuance of a restraining order, injunction or prohibition will not be in consonance with the supreme interest of justice as in fact it is petitioners who should be enjoined to respect the proprietary rights of respondent. Thus respondent prays for the dismissal of the petition and for such other reliefs or remedies that maybe in consonance with equity and justice.

In the reply to respondent's comment petitioners reiterate that Lot 18 is not Lot 12 of Cad. 259; that while they do not dispute that respondent is the vendee of the property covered by TCT 3454 (32057) the same refers to Lot 18 and not Lot 12; that petitioners refer to the report of Salbado that "8 or more families" be-longing to their association "were able to enter the property wherein they have established their respective abodes; that they filed a criminal case, against re-spondent at the Tanodbayan and an administrative case with the Metro Manila Commission; that the criminal case respondent filed against them in the City Fiscal's Office is a mere leverage; that they deny destroying the perimeter fence of the lot; and that they are not land grabbers.

In a rejoinder to petitioners' reply and an urgent motion to submit additional documentary evidence, etc., respondent traversed the allegations of petitioners and submitted the letter of the Director of the Bureau of Lands of 23 May 1985 that a cadastral map verification show Lot 18 of TCT No. 3454 (32057) appear more or less the same as Lot 12, Cad. 259" but that *an actual veri-fication is necessary in order to confirm the identity of the land."[8]

Petitioners filed their memorandum attaching thereto among others a blue print map of Pasay Cadastre No. 259 approved by then Director Jose P. Dans to show that Lot 12 is distinct from Lot 18.[9] On the other hand, respondent through his Manifestation and Compliance submitted the result of the verification survey of Acting Chief Isaias S. Cepe of August 26, 1985 showing that Lot 12 is identical to Lot 18;[10] the affidavit of Mr. Ferdinand (Naki) Hiranand, ranking officer of the vendor Bombay Association that at the time of the sale of the property to respondent there was no occupant thereon nor any shanty built;[11] and the copy of the resolution of the Tanodbayan clearing respondent.

A writ of prohibition is directed against any tribunal, corporation, board, or person, whether, exercising functions judicial or ministerial, whose proceedings are without or in excess of its or his jurisdiction, or with grave abuse of discretion, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[12] It is intended to prevent the oppressive exercise of legal authority.[13]

An injunction is a writ framed according to the circumstances of the case commanding an act which the Court regards as essential to justice, or restraining an act it deems contrary to equity and good conscience.[14] It is a judicial process whereby a person is required to do or refrain from doing a particular thing.[15] In order that a preliminary injunction may be granted at any time after the commencement of the action and before judgment, it must be established:

"SEC. 3. – x x x

- (a) That the plaintiff is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission or continuance of some act complained of during the litigation or the non-performance thereof would probably work injustice to the plaintiff; or
- (c) That the defendant is doing, threatens or is about to do, or is procuring or suffering to be done, some act probably in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual."^[16]

There are two requisites for the issuance of an injunction namely, (1) that the right to be protected exists; and (2) that the acts against which the injunction is to be directed are violative of said right.^[17]

The existence of a right violated is a pre-requisite to the granting of an injunction. An injunction will not issue to protect a right not in esse and which may never arise.^[18] Failure to establish either the existence of a clear and positive right which should be judicially protected through the writ of injunction, or that the defendant has committed or attempts to commit any act which has endangered or tends to endanger the existence of said right, is a sufficient ground for denying the injunction.^[19]

In this case the petitioners claim that they are entitled to the possession of the property in question and have filed an application for the allocation of the same to them by the Bureau of Lands being a patrimonial property. On the other hand, respondent contends that he is the true owner of said lot being private property which he purchased from the Bombay Merchant Association, Inc. as the titled owner thereof and that petitioners entered the property only after his acquisition of the same. Respondent further presented documents to show that Lot 12 as claimed by petitioners is identical to Lot 18 which is the titled property of respondent. Documents to show the contrary are also presented by the petitioners.

This Court is not a trier of facts. The parties must litigate the issue of identity of the property and ownership before the proper courts if they have not as yet done so. Petitioners by this time must have pursued to its termination their application with the Bureau of Lands to determine the merit of their claim thereto. As it is, petitioners have not established a clear and positive right to the property in question.

Thus the restraining order that this Court issued cannot be maintained any longer as there is no lawful justification therefor. The parties are advised to take the proper administrative or legal steps to protect their interests and establish their conflicting claims.

WHEREFORE, the petition is DISMISSED and the restraining order the Court issued is dissolved. No costs.

SO ORDERED.

Yap, (Chairman), Narvasa, Melencio-Herrera, Cruz, Feliciano, and Sarmiento, JJ., concur.

[1] Annexes B and C, petition.

[2] Annex E, petition.

[3] Annex B, *supra*.

[4] Annexes 1, 1-a and 2, Comment.

[5] Annex 3, Comment.

[6] Annex 4, Comment.

[7] Annexes 5 and 6, Comment.

[8] Annex A, Urgent Motion to allow respondent to submit additional documentary evidence, etc., 11. 76-79, rollo.

[9] Annexes B to B-2 Memorandum of petitioners.

[10] Annex B Manifestation and compliance of respondent.

[11] Annexes D, E supra.

[12] Section 2, Rule 65, Rules of Court.

[13] Dimayuga vs. Fernandez, 43 Phil. 304; Tong, etc. vs. Santamaria, 54 Phil. 571; Maria Lopez vs. Poras, L-25795, Oct. 29, 1955.

[14] Section 1, Rule 58, Rules of Court; 43 C.J.S. 405; Gainsburg vs. Dodge, 101 S.W. 2d 178, 193 Art. 473.

[15] Supra.

[16] Section 3, Rule 58, Rules of Court.

[17] Supra.

[18] Angela Estate Inc. vs. CFI of Negros Occidental, G.R. No. L-27084, July 31, 1968.

[19] North Negros Sugar Co., vs. Hidalgo, 63 Phil. 664; Araneta et al., vs. Gatmaitan et. al and Soriano et. al., G.R. Nos. L-9191 & L-8895, April 30, 1957.

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