

**ROMAN C. TUASON AND REMEDIOS V. TUASON, BY
ATTORNEY-IN-FACT TRINIDAD S. VIADO, PETITIONERS, VS.
REGISTER OF DEEDS, CALOOCAN CITY, MINISTRY OF JUSTICE, AND
THE NATIONAL TREASURER...**

G.R. No. 70484. January 29, 1988

Ponente: NARVASA, J.

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NARVASA, J.:

A more despotic, capricious, oppressive and unjustifiable exercise of government power than that manifested in this case can scarcely be found in the sordid annals of the martial law regime. Relief to the victims must be as it is hereby extended by the grant to them of the extraordinary writ of certiorari and prohibition condemning as unconstitutional, and annulling and perpetually enjoining the acts complained of.

Petitioner spouses, the Tuasons, were retired public school teachers. On April 6, 1965, with funds pooled from their retirement benefits and savings, they bought from Carmel Farms, Inc. (hereafter simply, Carmel) a piece of land measuring about 8,756 square meters, in the latter's subdivision in Barrio Makatipo, Caloocan City. In virtue of this sale, Carmel's Torrens title (No. 64007) over the lot was cancelled and a new one (No. 8314) issued in the name of the Tuasons. The Tuasons took possession of their property.

Some eight (8) years thereafter, the Tuasons' travails began. They woke up one morning to discover that by presidential fiat, they were no longer the owners of the land they had purchased with their hard-earned money, and that their land and the other lots in the subdivision had been "declared open for disposition and sale to the members of the Malacanang Homeowners Association, Inc., the present bona fide occupants thereof."

On September 14, 1973 -- a year almost to the day after the declaration of martial law -- Mr. Ferdinand Marcos, then president of the country, invoking his emergency powers, issued Presidential Decree No. 293 with immediate effect. The decree invalidated inter alia the title of the Tuasons' vendor, Carmel, which had earlier purchased from the Government the land it had subsequently subdivided into several lots for sale to the public (the Tuasons being among the buyers). The land bought by Carmel was part of the Tala Estate (one of the so-called "Friar Lands"). Carmel had bought the land under Act No. 1120 and C.A. No. 32, as amended. Under these statutes:

1)

a bona fide settler or occupant was allowed to purchase (if he did not wish to lease) the portion occupied by him at the price fixed by the Government, in cash or on installment; the interested buyer was given a certificate of sale, which was regarded as an agreement by him to pay the purchase price in the installments and at the interest specified, the acceptance of such certificate making the occupant a debtor of the government;

2)

until the price was fully paid however, title was reserved in the Government, and any sale or encumbrance made by the purchaser prior to such full payment was explicitly declared to "be invalid as against the Government ** and ** in all respects subordinate to its prior claim";

3)

in the event of default by a purchaser to pay any installment of purchase money and interest thereon, the Chief of the Bureau of Public Lands (now Director of Lands) had the duty "at once to protect the Government from loss" by bringing suit to obtain judicial authority to enforce the Government's lien on the land by selling it in the same manner as for foreclosure of mortgages, the purchaser at such sale being deemed to acquire a good and indefeasible title, and the proceeds of the sale being applied to the payment of the costs of the court and all installments due or to become due; and

4)

in the event of completion of payment, the Government transferred title to the land to the purchaser "by proper instrument of conveyance", the certificate of title over the land to issue and become effective in the manner provided by the Land Registration Act.[1]

Said Presidential Decree No. 293 made the finding[2] that Carmel had failed to complete payment of the price. It adjudged that -

" * * according to the records of the Bureau of Lands, neither the original purchasers nor their subsequent transferees have made full payment of all installments of the purchase money and interest on the lots claimed by the Carmel Farms, Inc., including those on which the dwellings of the members of said Association[3] stand. Hence, title to said land has remained with the Government, and the land now occupied by the members of said association has never ceased to form part of the property of the Republic of the Philippines, any and all acts affecting said land and purporting to segregate it from the said property of the Republic of the Philippines being therefore null and void ab initio as against the law and public policy."

Upon this adjudgment, Mr. Marcos invalidated the titles of Carmel Farms, Inc. and all those derived therefrom, and declared as a foretold "the members of the Malacanang Homeowners Association, Inc. the present bonafide occupants" of the lots which, in consequence, thereby became open to them for "disposition and sale *** pursuant to Commonwealth Act No. 32, as amended." [4]

It seems to have completely escaped Mr. Marcos's attention that his decree contained contradictory declarations. While acknowledging on the one hand that the lots in the Carmel Subdivision were occupied by the buyers thereof, and in fact the latter's dwellings stood thereon, he states on the other that the "members of the Malacanang Homeowners Association, Inc. (are) the present bona fide occupants" of all said lots. The latter averment is not only essentially inconsistent with the former but is both a physical and legal fallacy. Well known is the rule of physics that two objects cannot occupy the same space at the same time. And the absurdity of the subsumed proposition is self-evident, for persons not in possession of land, who probably have not even set foot thereon, cannot be deemed "occupants" thereof, much less "bonafide" occupants.

But this notwithstanding, and upon the factual premise already indicated, Mr. Marcos disposed of the land of the petitioner spouses and others similarly situated as they, in the following imperious manner:

"NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and

pursuant to Proclamation 1081, dated September 21, 1972, and General Order No. 1, dated September 22, 1972, do hereby order and decree that any and all sales contracts between the Government and the original purchasers, are hereby cancelled, and those between the latter and the subsequent transferees, and any and all transfers thereafter, covering lots 979, 981, 982, 985, 988, 989, 990, 991-new, 1226, 1228, 1230, and 980-C-2 (LRC PSD-1730), all of Tala Estate, Caloocan City, are hereby declared invalid and null and void ab initio as against the Government; that Transfer Certificates of Title Nos. 62603, 62604, 62605, covering lots 1, 2 and 3, PCS-4383, all in the name of Carmel Farms, Inc., which are a consolidation and subdivision survey of the lots hereinbefore enumerated, are declared invalid and considered cancelled as against the Government; and that said lots are declared open for disposition and sale to the members of the Malacanang Homeowners Association, Inc., the present bona fide occupants thereof, pursuant to Commonwealth Act No. 32, as amended."

On the strength of this presidential decree, the Register Deeds of Caloocan City caused the inscription on the Tuasons' title, TCT No. 8314, of the following -

"MEMORANDUM. - Pursuant to Presidential Decree No. 293, this certificate of title is declared invalid and null and void ab initio and considered cancelled as against the Government and the property described herein is declared open for disposition and sale to the members of the Malacanang Homeowners Association, Inc."

The Tuason Spouses thereupon filed with this Court a petition for certiorari assailing the Marcos decree as an arbitrary measure which deprived them of their property in favor of a selected group, in violation not only of the constitutional provisions on due process and eminent domain^[5] but also of the provisions of the Land Registration Act on the indefeasibility of Torrens titles;^[6] and they prayed that the Register of Deeds be directed to cancel the derogatory inscription on their title and restore its efficacy, or in the alternative, that they be compensated for the loss from the Assurance Fund.

Mr. Marcos's Solicitor General sought to sustain the decree. In his comment on the petition,^[7] he questioned the propriety of the remedy of certiorari resorted to by the petitioners, it not appearing that the public respondents were being sued as judicial or quasi-judicial officers who had acted without or in excess of their jurisdiction, or with grave abuse of discretion. He opined that the petitioner spouses had no cause to complain of unjust deprivation of property because in legal contemplation,^[8] they had never become owners thereof because of non-payment of the purchase price by their predecessor-in-interest; and the decree was justifiable under the social justice clause of the Constitution and the police power, being in response to the pressing housing need of the employees of the Office of the President who were left homeless and landless after they were asked to vacate Malacanang Park where they had theretofore been residing. He expressed the view, too, that petitioner spouses were not entitled to recover anything from the Assurance Fund.

Petitions for intervention have of late been filed by sixty-four (64) persons, members of the "Consuelo Heights Homeowners Association" headed by Tomasa Bartolome, on the claim that they, too, had been divested of their lands by the same Presidential Decree No. 293, adopting as their own the allegations and prayer embodied in the Tuasons' petition.

The procedural issue is quite easily disposed of. It is true that the extraordinary writ of certiorari^[9] may properly issue to nullify only judicial or quasi-judicial acts, unlike the writ of prohibition which may be directed against acts either judicial or ministerial. Section 1, Rule 65 of the Rules of Court deals with the writ of certiorari in relation to "any tribunal, board or officer exercising judicial functions, while Section 2 of the same Rule treats of the writ of prohibition in relation to "proceedings of any tribunal, corporation, board, or person ** exercising functions judicial or ministerial." But the petition will be shown upon analysis to be in reality directed against an unlawful exercise of judicial power.

The decree reveals that Mr. Marcos exercised an obviously judicial function. He made a determination of facts, and applied the law to those facts, declaring what the legal rights of the parties were in the premises. These acts essentially constitute a judicial function,[10] or an exercise of jurisdiction -- which is the power and authority to hear or try and decide or determine a cause.[11] He adjudged it to be an established fact that "neither the original purchasers nor their subsequent transferees have made full payment of all installments of the purchase money and interest on the lots claimed by Carmel Farms, Inc., including those on which the dwellings of the members of ** (the) Association (of homeowners) stand." And applying the law to that situation, he made the adjudication that "title to said land has remained with the Government, and the land now occupied by the members of said association has never ceased to form part of the property of the Republic of the Philippines," and that "any and all acts affecting said land and purporting to segregate it from the said property of the Republic ** (were) null and void ab initio as against the law and public policy."

These acts may thus be properly struck down by the writ of certiorari, because done by an officer in the performance of what in essence is a judicial function, if it be shown that the acts were done without or in excess of jurisdiction, or with grave abuse of discretion. Since Mr. Marcos was never vested with judicial power -- such power, as everyone knows, being vested in the Supreme Court and such inferior courts as may be established by law[12] -- the judicial acts done by him were in the circumstances indisputably perpetrated without jurisdiction. The acts were completely alien to his office as chief executive, and utterly beyond the permissible scope of the legislative power that he had assumed as head of the martial law regime.

Moreover, he had assumed to exercise judicial power -- i.e., determined the relevant facts and applied the law thereto -- without a trial at which all interested parties were accorded the opportunity to adduce evidence to furnish the basis for a determination of the facts material to the controversy. He made the finding ostensibly on the basis of "the records of the Bureau of Lands." Prescinding from the fact that there is no indication whatever of the nature and reliability of these records and that they are in no sense conclusive, it is undeniable that the petitioner Tuasons (and the petitioners in intervention) were never confronted with those records and afforded a chance to dispute their trustworthiness and present countervailing evidence. This is yet another fatal defect. The adjudication was patently and grossly violative of the right to due process to which the petitioners are entitled in virtue of the Constitution. Mr. Marcos, in other words, not only arrogated unto himself a power never granted to him by the Constitution or the laws but had in addition exercised it unconstitutionally.

In any event, this Court has it in its power to treat the petition for certiorari as one for prohibition if the averments of the former sufficiently made out a case for the latter.[13] Considered in this wise, it will also appear that an executive officer had acted without jurisdiction -- exercised judicial power not granted to him by the Constitution or the laws -- and had furthermore performed the act in violation of the constitutional rights of the parties thereby affected. The Court will grant such relief as may be proper and efficacious in the premises even if not specifically sought or set out in the prayer of the appropriate pleading, the permissible relief being determined after all not by the prayer but by the basic averments of the parties' pleadings.[14]

There is no dispute about the fact that title to the land purchased by Carmel was actually issued to it by the Government. This of course gives rise to the strong presumption that official duty has been regularly performed,[15] that official duty being in this case the ascertainment by the Chief of the Bureau of Public Lands of the fulfillment of the condition prescribed by law for such issuance, i.e., the payment in full of the price, together with all accrued interest. Against this presumption there is no evidence. It must hence be accorded full sway in these proceedings. Furthermore, the title having been duly issued to Carmel, it became "effective in the manner provided in section one hundred and twenty-two of the Land Registration Act." [16]

It may well be the fact that Carmel really did fail to make full payment of the price of the land purchased by it

from the Government pursuant to the provisions of Act 1120. This is a possibility that cannot be totally discounted. If this be the fact, the Government may bring suit to recover the unpaid installments and interest, invalidate any sale or encumbrance involving the land subject of the sale, and enforce the lien of the Government against the land by selling the same in the manner provided by Act Numbered One Hundred and Ninety for the foreclosure of mortgages.[17] This it can do despite the lapse of a considerable period of time. Prescription does not lie against the Government. But until and unless such a suit is brought and results in a judgment favorable to the Government, the acquisition of title by Carmel and the purchases by the petitioners and the petitioners-intervenors from it of portions of the land covered by its original title must be respected. At any rate, the eventuation of that contingency will not and cannot in any manner affect this Court's conclusion, herein affirmed, of the unconstitutionality and invalidity of Presidential Decree No. 293, and the absolute lack of any right to the land or any portion thereof on the part of the members of the so-called "Malacanang Homeowners Association, Inc." The decree was not as claimed a licit instance of the application of social justice principles or the exercise of police power. It was in truth a disguised, vile stratagem deliberately resorted to favor a few individuals, in callous and disdainful disregard of the rights of others. It was in reality a taking of private property without due process and without compensation whatever, from persons relying on the indefeasibility of their titles in accordance with and as explicitly guaranteed by law.

One last word, respecting the petitioners in intervention. Their petition to intervene substantially fulfilled the requirements laid down for a class suit[18] and was consequently given due course by the Court. They are therefore covered by this judgment.

WHEREFORE, Presidential Decree No. 293 is declared to be unconstitutional and void ab initio in all its parts. The public respondents are commanded to cancel the inscription on the titles of the petitioners and the petitioners in intervention of the memorandum declaring their titles null and void and declaring the property therein respectively described "open for disposition and sale to the members of the Malacanang Homeowners Association, Inc."; to do whatever else is needful to restore the titles to full effect and efficacy; and henceforth to refrain, cease and desist from implementing any provision or part of said Presidential Decree No. 293. No pronouncement as to costs.

Yap, Fernan, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

Teehankee, C.J., with a brief concurrence.

Feliciano, J., see separate concurring opinion.

[1] Secs. 11, 12, 13, 15, Act 1120

[2] Set out in one of its Whereas Clauses

[3] Of lot buyers of the Carmel Farms, Inc. subdivision; emphasis supplied

[4] Emphasis supplied

[5] Secs. 1 and 2, Article IV, 1973 Constitution

[6] Secs. 39 and 47, Act No. 496, The Land Registration Act

[7] Rollo, pp. 38-49

[8] Sec. 15, Act 1120; see footnote 2, pages 2-3, *supra*

[9] The special civil action of certiorari under Rule 65 -- which is an original action -- is of course different and distinct from appeal by certiorari under Rule 45.

[10] See *Felipe v. Leuterio*, L-4606, May 30, 1952; *Lizarraga Hermanos v. Yap Tico*, 24 Phil. 504; *Lambert v. Fox*, 26 Phil. 588

[11] *Herrera v. Barreto*, 25 Phil. 245; *Conchada v. Director of Prisons*, 31 Phil. 94; *U.S. v. Limsiongco*, 41 Phil. 94; *Reynolds v. Stockton*, 140 U.S. 254; cited in *Moran, Comments on the Rules*, 1979 ed., vol. I, p. 51

[12] ART. X, Sec. 1, 1973 Constitution

[13] SEE *Nacionalista Party v. Bautista*, 85 Phil. 101; *Cruz v. C.I.R.*, 8 SCRA 626; *Citizens Labor Union v. C.I.R.*, 18 SCRA 624

[14] SEE *Ras v. Sua*, 25 SCRA 153; *Alelaya v. Espanola*, 107 SCRA 564; *Cultura v. Tapucar*, 140 SCRA 311

[15] Sec. 5 (m), Rule 131, Rules of Court

[16] Sec. 12, Act 1120

[17] Secs. 15 and 17, Act 1120

[18] The requisites are: (1) the subject matter of the controversy is of common or general interest to many persons; (2) the parties affected are so numerous that it is impracticable to bring them all before the court; and (3) the parties bringing the class suit are sufficiently numerous or representative of the class. Section 12, Rule 3, Rules of Court; *Sulong Bayan, Inc. v. Araneta*, 72 SCRA 347

CONCURRING OPINION

TEEHANKEE, C.J.:

I concur fully in the main opinion forcefully written by Mr. Justice Narvasa and the separate opinion of Mr. Justice Feliciano depicting the unparalleled "despotic, capricious, oppressive and unjustifiable exercise of government power" by the deposed President Ferdinand E. Marcos, as struck down by the Court's unanimous judgment in the case at bar. To be sure, this is but one of the many unconstitutional and void Presidential Decrees of the past unlamented regime which perforce have been so annulled and relief granted to the victims, as they are brought to the Court's attention.

These arbitrary, capricious and oppressive decrees, tailored to suit the deposed President's every wish and whim, were the product of unrestrained power, as the deposed President took over the entire government with the imposition of martial law in September, 1972. Such unrestrained exercise of power was heightened by the Court's majority pronouncement in April, 1983 (even as martial law had been lifted at least on paper two years earlier by Proclamation No. 2045 in January, 1981) that in times of grave emergencies, "The President takes absolute command, for the very life of the nation and its government, which, incidentally, includes the courts, is in grave peril. In so doing, the President is answerable only to his conscience, the people and to God. For their part, in giving him the supreme mandate as their President, the people can only trust and pray that, giving him their own loyalty with utmost patriotism, the President will not fail them." [1]

It certainly cannot be gainsaid that such judicial abdication turned back the clock to lese majeste and dismantled the intricate system of reenforcing rules, principles and procedures that have evolved through centuries of struggle for the more efficacious protection through independent courts of the individual's right to life, liberty and property

and due process of law, so that they would no longer have to depend upon prayers for the purpose.

This concurrence is to express the fervent prayer that we have learned well our lesson that absolute power corrupts absolutely and that as Thomas Jefferson warned (which sadly proved to be true in our case), "a single consolidated government would become the most corrupt government on earth."

We have won back our freedoms and restored democracy, with three great departments of government, and separation of powers and checks and balances. As Rizal taught us, freedom must be nurtured and cherished, not abused, else we lose or forfeit it. We must reconsecrate ourselves to the supremacy of the Rule of Law and renew once more our faith in and adherence to the force of law, rather than the law of force - for only in the Rule of Law may a democracy survive and flourish. This means selfless adherence by all to the basics, for as Brandeis aptly expressed it, "Democracy is a serious undertaking. It is more difficult to maintain than to achieve. It demands continuous sacrifice by the individual and more exigent obedience to the moral law than any other form of government."

[1] *Garcia-Padilla vs. Enrile, In re: Habeas Corpus for Dr. Aurora Parong, et al.*, 121 SCRA 472 (1983).

CONCURRING OPINION

FELICIANO, J.:

I quite agree with the constitutional law analysis of my learned brother in the Court, Mr. Justice Narvasa, in his eloquent opinion. I should like simply to add that Presidential Decree No. 293 is constitutionally offensive for still another reason: it constitutes a bill of attainder, prohibited not only under the 1935 and 1987 Constitutions but also under the 1973 Constitution.

Bills of attainder are an ancient instrument of tyranny. In England a few centuries back, Parliament would at times enact bills or statutes which declared certain persons attainted and their blood corrupted so that it lost all heritable quality (*Ex Parte Garland*, 4 Wall. 333, 18 L.Ed. 366 [1867]). In more modern terms, a bill of attainder is essentially a usurpation of judicial power by a legislative body. It envisages and effects the imposition of a penalty - the deprivation of life or liberty or property - not by the ordinary processes of judicial trial, but by legislative fiat. While cast in the form of special legislation, a bill of attainder (or bill of pains and penalties, if it prescribed a penalty other than death) is in intent and effect a penal judgment visited upon an identified person or group of persons (and not upon the general community) without a prior charge or demand, without notice and hearing, without an opportunity to defend, without any of the civilized forms and safeguards of the judicial process as we know it (*People v. Ferrer*, 48 SCRA 382 [1972]; *Cummings v. Missouri*, 4 Wall. 277, 18 L.Ed. 356 [1867]; *U.S. v. Lovett*, 328 U.S. 303, 90 L.Ed. 1252 [1945]; *U.S. v. Brown*, 381 U.S. 437, 14 L.Ed. 2d. 484 [1965]). Such is the archetypal bill of attainder wielded as a means of legislative oppression. P.D. No. 293 has clearly been cast from that mould.

Former President Marcos, by establishing martial law, undertook to assume legislative powers in addition to his regular powers as Chief Executive. He consolidated in his own person the powers of the Presidency and the powers of Congress. Such was the theory underlying the streams of decrees, executive orders, executive proclamations, letters of instruction and the like that he released upon the nation. The emergence of Presidential Decree No. 293 into public light underscores the fact that Mr. Marcos also purported at times to exercise judicial prerogatives. If one viewed PD No. 293 as issued by Mr. Marcos in his presidential capacity, as it were, the decree is constitutionally vitiated as an exercise of a power - judicial power - deliberately denied to the Chief Executive by the Constitution. This is made clear in Mr. Justice Narvasa's opinion. If one viewed PD No. 293 as

rendered by Mr. Marcos in his other, assumed - i.e. legislative - capacity, the decree is similarly fundamentally flawed as a bill of attainder and ultimately, again, as an assumption unto himself of a power and authority clearly withheld by the Constitution from both the Chief Executive and the legislative body and lodged elsewhere in our constitutional system.

I vote for the nullification of PD No. 293 by the grant of certiorari.

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