

RESTITUTO CALMA, PETITIONER, VS. THE HON. COURT OF APPEALS (FIFTH DIVISION) AND PLEASANTVILLE DEVELOPMENT CORPORATION, RESPONDENTS.

G.R. No. 78447. August 17, 1989

Ponente: CORTES, J.

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CORTES, J.:

Petitioner Restituto Calma, through this Petition for Review on certiorari, seeks to set aside the decision of the Court of Appeals in CA-G.R. SP. No. 10684 dated 26 February 1987 declaring null and void an order of the Human Settlements Regulatory Commission (hereinafter referred to as the COMMISSION) dated 30 September 1986 calling for the issuance of a writ of execution to enforce its decision of 22 May 1985.

The antecedents of this case are as follows:

Sometime in August 1975, the spouses Restituto and Pilar Calma purchased a lot in respondent Pleasantville Development Corporation's (hereinafter referred to as PLEASANTVILLE) subdivision in Bacolod City, known as City Heights Phase II. In 1976, they built a house on said lot and established residence therein. Fabian and Nenita Ong also purchased from PLEASANTVILLE a lot fronting that of the Calma spouses sometime in the years 1979-1980, and constructed their own buildings where they resided and conducted their business. On 25 April 1981, petitioner Calma wrote the president of the Association of Residents of City Heights, Inc. (ARCHI) complaining that the compound of the Ongs was being utilized as a lumber yard and that a "loathsome noise and nervous developing sound" emanating therefrom disturbed him and his family and caused them and their son to suffer nervous tension and illness [Rollo, 58.] The president of the association, in his reply, stated that the association's board had referred the matter to Fabian Ong who had already taken immediate action on petitioner's complaint, i.e., by ordering the transfer of the lumber cutting machine and by instructing his laborers not to do any carpentry or foundry works in the early morning or afternoon and in the evening. Finding the measures taken by the association and Fabian Ong unsatisfactory, petitioner on 17 June 1981 wrote and asked PLEASANTVILLE, as its duty and obligation, to abate the nuisance emanating from the compound of the Ong family. Failing to get an answer, the Calma spouses filed a complaint for damages against the Ong spouses and PLEASANTVILLE on 28 July 1981 before the Court of First Instance of Negros Occidental docketed as Civil Case No. 16113, alleging inter alia that were it not for PLEASANTVILLE's act of selling the lot to the Ongs and its failure to exercise its right to cause the demolition of the alleged illegal constructions, the nuisance could not have existed and petitioner and his family would not have sustained damage. Thus, the complaint prayed for actual, moral and exemplary damages and attorney's fees and expenses of litigation.

Petitioner also filed with the National Housing Authority (NHA), on 31 August 1981, a complaint for "Violation of the Provisions, Rules and Regulations of the Subdivision and Condominium Buyers Protective Decree under Presidential Decree No. 957," claiming inter alia that were it not for the negligent acts of PLEASANTVILLE in selling the parcel of land to the spouses Fabian and Nenita Ong and its refusal to exercise its right to cause the

demolition of the structures built by the Ongs in violation of the contractual provision that the land shall be used only for residential purposes, the illness of petitioner and his son would not have happened. Petitioner prayed that PLEASANTVILLE be ordered to abate the nuisance and/or demolish the offending structures; to refund the amortization payments made on petitioner's lot; and to provide petitioner and his son with medication until their recovery. He also prayed that PLEASANTVILLE be penalized under Sec. 39 of P.D. No. 957 and that its license be revoked.

After the answer to the complaint was filed, the issues joined and the respective position papers submitted, the COMMISSION (which had in the meantime taken over the powers of the NHA,)* rendered its decision in HSRC No. REM-92181-0547 on 22 May 1985 dismissing the complaint of the petitioner for lack of merit, finding that PLEASANTVILLE did not violate Sections 9(b), 19 and 23 of P.D. No. 957, but included a portion holding PLEASANTVILLE responsible for the abatement of the alleged nuisance on the ground that it was part of its implied warranty that its subdivision lots would be used solely and primarily for residential purpose.

Thus, the dispositive portion of the COMMISSION's decision read:

In view of the foregoing, the complaint for violation of Sections 9(f) and 23 of P.D. 957 is hereby DISMISSED. Respondent, however is hereby ordered to take appropriate measures for the prevention and abatement of the activities/nuisance complained of so as to ensure complainant's peaceful and pleasant living in the residential subdivision of respondent. In this regard, respondent within 15 days from finality of this decision, shall submit a timetable of the action to be taken in compliance with this directive and thereafter, a periodic status report of the progress of compliance. [Rollo, p. 35; Underscoring supplied.]

On 27 August 1986, respondent COMMISSION issued the order granting the issuance of a writ of execution of its decision. Aggrieved, PLEASANTVILLE filed a petition for prohibition with preliminary injunction with this Court assailing the portion of the COMMISSION's decision ordering it to "take appropriate measures for the prevention and abatement of the nuisance complained of," and its directive requiring PLEASANTVILLE to submit a timetable of the action to be taken and a periodic status report of the progress of its compliance. PLEASANTVILLE asserted that since the COMMISSION had found that it did not violate any provision of P.D. No. 957, the COMMISSION exceeded its jurisdiction when it ordered PLEASANTVILLE to prevent/abate the alleged nuisance complained of.

The Court referred the petition to the Court of Appeals which rendered judgment holding that the COMMISSION "acted capriciously and in excess of its jurisdiction in imposing an obligation upon the petitioner after absolving it of the complaint filed against it" [Rollo, p. 38], the relevant portion of which decision is quoted below:

We find the petition impressed with merit. Presidential Decree No. 957 is a regulatory decree with penal sanctions. While it absolved the petitioner of any penal liability by dismissing the complaint against it because it has not violated the pertinent provisions of Sections 9(f), 19 and 23, P.D. 957, yet it imposed an obligation to perform something that was not proven in the complaint -- that is to abate the occurrence of nuisance and to submit a timetable of action and a periodic report of the progress of compliance. The order does not only appear overbearing and/or arbitrary, but it is without any basis in fact....

Thus, the Court of Appeals ruled:

WHEREFORE, in view of the foregoing, We find merit in the petition and the same is hereby GRANTED. It is hereby ORDERED:

- 1) That order of respondent Commission dated 27 August 1986 for the issuance of a writ of execution is SET ASIDE as null and void;
- 2) That should any writ relative thereto been (sic) issued, the same is DISSOLVED or CANCELLED;

3) That portion of the dispositive portion of the decision of respondent Commission of May 22, 1985, ordering petitioner respondent to take appropriate measure for the prevention and abatement of activities/nuisance complained of in said case and the submission of timetable of action and periodic report is SET ASIDE as null and void.

No pronouncement as to costs.

SO ORDERED. [Rollo, pp. 38-39.]

Petitioner moved for reconsideration of the decision but the Court of Appeals denied his motion. Hence, petitioner brought the instant petition for review on certiorari seeking the reversal of the decision of the Court of Appeals and the reinstatement of the COMMISSION'S decision.

1. The power to abate a nuisance, is not one of those enumerated under P.D. No. 957, the subdivision and Condominium Buyers Protective Decree. However, as pointed out by the Solicitor General before the Court of Appeals, the COMMISSION has been specifically authorized by Executive Order No. 648 dated February 7, 1981 (otherwise known as the "Charter of the Human Settlements Regulatory Commission"), to -

Issue orders after conducting the appropriate investigation for the cessation or closure of any use or activity and to issue orders to vacate or demolish any building or structure that it determines to have violated or failed to comply with any of the laws, presidential decrees, letter of instructions, executive orders and other presidential issuances and directives being implemented by it, either on its own motion or upon complaint of any interested party. [Sec. 5 (p).]**

At this point the Court finds it unnecessary to go into whether or not the COMMISSION's order to PLEASANTVILLE to take measures for the prevention and abatement of the nuisance complained of finds solid support in this provision because, as found by the Court of Appeals, the COMMISSION's conclusion that the activities being conducted and the structures in the property of the Ongs constituted a nuisance was not supported by any evidence. The Solicitor General himself, in his comment filed in the Court of Appeals, admits that the decision of the COMMISSION did not make any finding of a nuisance [CA Rollo, p. 93.] Apparently, on the basis of position papers, the COMMISSION assumed the existence of the nuisance, without receiving evidence on the matter, to support its order for the prevention or abatement of the alleged nuisance.

Moreover, the spouses Ong, were not even party to the proceedings before the COMMISSION which culminated in the order for the prevention or abatement of the alleged nuisance. The parties before the COMMISSION were petitioner and PLEASANTVILLE only, although the persons who would be directly affected by a decision favorable to petitioner would be the Ong spouses. Certainly, to declare their property or the activities being conducted therein a nuisance, and to order prevention and abatement, without giving them an opportunity to be heard would be in violation of their basic right to due process.

Thus, we find in this case a complete disregard of the cardinal primary rights in administrative proceedings, which had been hornbook law since the leading case of *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940).

Consequently, the COMMISSION gravely abused its discretion amounting to lack or excess of jurisdiction when it ordered PLEASANTVILLE to "take appropriate measure for the prevention/abatement of the nuisance complained of."

2. Petitioner insists that the Ong spouses were not indispensable parties in the case before the COMMISSION, hence no violation of due process was committed, because the action was primarily based on PLEASANTVILLE's violation of its contractual and statutory obligations to petitioner. He advances the view that PLEASANTVILLE breached its warranty that the subdivision shall be exclusively residential.

In testing the validity of this contention, the following provisions of the printed Contract to Sell on Installment [Annex "E" of the Petition] between PLEASANTVILLE and petitioner which petitioner claims to be uniform for all lot-buyers in the subdivision (but which was not established by evidence in the proceedings before the COMMISSION), are to be considered:

* * *

12. The Vendee agrees to constitute as permanent lien on the property subject-matter of this agreement the following conditions and regulations:

a) That the land shall be used exclusively for commercial/residential purposes.

* * *

22. That the lot or lots subject-matter of this contract shall be used exclusively for residential purposes and only one single family residential building will be constructed on each lot provided that the VENDEE may construct a separate servant's quarter;

* * *

[Rollo, p. 55; Underscoring supplied.]

These provisions of the contract do not unequivocally express a warranty that the subdivision lots shall be used exclusively for residential purposes. On the contrary, the contract also explicitly authorizes the use of the lots for commercial or residential purposes.

Because of the confusing language of items 12 and 22 of the printed contract to sell, it is not possible to read from the text alone a warranty that the subdivision shall be purely residential. Other evidence of such warranty, including representations, if any, made by PLEASANTVILLE to petitioner, would be needed to establish its enforceability.

Petitioner also made reference to a "statutory" implied warranty, but failed to cite the provision of law imposing the warranty. It could not be the Civil Code, as the title on sales provides for only two classes of implied warranties: in cases of eviction and against hidden defects of or encumbrances upon the thing sold [Arts. 1547, 1548-1560; 1561-1581.] Neither is any warranty imposed by P.D. No. 957.

As the party suing on the basis of breach of warranty, petitioner would have to come up with something better than a bare assertion that there was a breach. He would have to prove first and foremost that there is indeed a warranty that had been breached, then establish how the breach was committed.

3. A final word. There is no denying that in instituting the complaint for damages before the trial court and the complaint for violation of P.D. 957 before the COMMISSION petitioner was motivated by the twin purposes of seeking the abatement of the alleged nuisance and recovering damages for the medical problems purportedly caused by the nuisance. He certainly cannot be faulted for seeking redress in all available venues for the alleged violation of his family home's tranquility, for the defense of one's home and family is a natural instinct. However, redress for petitioner's grievances will have to be tempered by the guiding hand of due process. Thus, the nullification of the assailed portion of the COMMISSION's judgment becomes inevitable if we are to adhere to the basic tenets of law. A wrong cannot be corrected by another wrong.

Hence, no reversible error was committed by the Court of Appeals when it nullified the assailed portion of the COMMISSION's decision, the order granting the writ of execution, and any writ of execution issued pursuant thereto.

But all is not lost for petitioner and his family. As mentioned earlier, there is a pending civil case (Civil Case No. 16113, Regional Trial Court of Negros Occidental), instituted by petitioner, where the alleged breach of warranty, coupled with PLEASANTVILLE's inaction, is the primary basis for the complaint for abatement and damages. Here he can prove the existence of the warranty and show how it was breached. It is also in this case where the determination of whether or not the activities conducted in the property of the Ong spouses or the structures thereat constitute a nuisance will have to be made. Also herein is the proper forum where, following another theory, it could be determined whether the Contract to Sell (assuming that the contract between PLEASANTVILLE and the Ongs is similar) establishes an enforceable obligation in favor of third parties, i.e., other lot-buyers in the subdivision. In said proceeding the factual issues can be fully threshed out and the Ong spouses, the parties who shall be directly affected by any adverse judgment, shall be afforded the opportunity to be heard as they had been impleaded as defendants therein together with PLEASANTVILLE.

WHEREFORE, there being no cogent reasons to reverse the decision of the Court of Appeals, the same is hereby AFFIRMED and the petition DENIED for lack of merit.

SO ORDERED.

Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.
Fernan, C.J., on official leave.

* Exec. Order No. 648 dated February 7, 1981 (Charter of the Human Settlements Regulatory Commission) transferred the functions of the National Housing Authority to the Human Settlements Regulatory Commission (HSRC) [79 O.G. 4335.] Subsequently, Exec. Order No. 90, dated December 17, 1986, renamed the HSRC as the Housing and Land Use Regulatory Board [83 O.G. 88.]

** It must be pointed out, however, that the powers of the COMMISSION under E.O. No. 648 revolve around zoning and other forms of land use control, urban renewal, and human settlements. Thus, reference is made to P.D. Nos. 399, 815, 933, 957, 1216, 1344, 1396, 1517 and LOI Nos. 713, 729, 833, 935, the Urban Land Reform Act and decrees relating to regulation of the value of land and improvements and their rental [See Sec. 5(a) to (c).]

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