

**MERVILLE PARK HOMEOWNERS ASSOCIATION, INC., PETITIONER,
VS. HON. FRANCISCO X. VELEZ AND EDGARDO M. SALANDANAN,
RESPONDENTS.***G.R. No. 82985. April 22, 1991*

Ponente: FELICIANO, J.

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Petitioner Merville Park Homeowners Association, Inc. ("MPHAI"), a non-stock, non-profit corporation, became the owner of the pipelines and waterworks system ("waterworks system") of Merville Park Subdivision in Parañaque, Metro Manila, by virtue of a deed of donation dated 24 February 1977 executed in its favor by Merville Development Corporation.

On 19 December 1978, MPHAI, through its then President Ernesto N. Gonzales, entered into a contract of lease with private respondent Edgardo Salandanan covering its waterworks system to insure efficient water service within the Merville Park Subdivision ("Subdivision"). That lease contract required respondent Salandanan to construct additional wells, to put into full operational condition Wells Nos. 4 and 5 as well as to rehabilitate Wells Nos. 1, 2 and 3. The contract also allowed respondent Salandanan to increase annually the water rates but only to the extent of ten percent (10%) of the preceding year's rates. The water rates set out in the contract could be charged only upon completion of Well No. 5. The lease contract was later on amended to provide for, inter alia, a period of ten (10) years commencing from its signing on 20 July 1981. In that amended contract, the parties agreed to increase the water rates which increase was in turn approved by the National Water Resources Council. It was also there provided that each homeowner shall pay a deposit in the amount of P300.00 which was to be used to pay for respondent Salandanan's overdue electric bill with Meralco, and thereafter, to be credited against the homeowner's future water bills.

Subsequently, respondent Salandanan again asked for an increase in water rates. MPHAI was at first adamant to the point of filing a case in court against respondent Salandanan. But sometime in 1982, MPHAI and respondent Salandanan arrived at a compromise. In that compromise agreement, MPHAI consented to an increase in the water rates as urged by respondent Salandanan but conditioned upon his completion of Well No. 2 (New Madrid Well). The compromise agreement was later amended and provided for a new water rate schedule effective 1 July 1984, but similarly conditioned upon Salandanan's completion of Well No. 2.

On 16 July 1985, MPHAI commenced an action, Civil Case No. 11124, before Branch 136 of the Regional Trial Court (RTC) of Makati, presided over by Judge Ricardo Francisco, against respondent Salandanan. In this suit, MPHAI sought to rescind the amended lease contract and the amended compromise agreement, and prayed for issuance of a writ of preliminary mandatory injunction. MPHAI alleged in its complaint that sometime in 1984 for failure of respondent Salandanan to pay his electric bills amounting to P1,035,000.00, Meralco had cut off the electric power supply of his rented water pumps resulting in a severe water shortage within the Subdivision and thereby endangering the lives and health of the residents thereof; that aside from respondent Salandanan's failure

to pay his electric bills, he had violated his contract with petitioner by neglecting to drill and complete new wells and undertake immediate repairs of broken water pumps; that there was an immediate need to issue a writ of preliminary mandatory injunction in its favor to enable it to take possession and control of the water works system.

Judge Francisco, in an order dated 23 July 1985, granted MPHAI's prayer for a writ of preliminary mandatory injunction and directed respondent Salandanan to turn over to MPHAI the operation and control of the waterworks system. This prompted respondent Salandanan to file an urgent motion for reconsideration stating, among other things, that the regular courts had no jurisdiction over the subject matter of the case, the same being under the jurisdiction of the National Water Resources Council; and that the case was filed prematurely considering that MPHAI had not as yet exhausted the available administrative remedies.

After private respondent had filed an answer with counter-claim and third-party complaint, the case was re-raffled to Branch 180 presided over by Judge Benigno M. Puno, who in an order dated 12 August 1985, lifted the writ of preliminary mandatory injunction. The case, however, was once more re-raffled and this time it went to Branch 149 with Judge Manuel Yuzon presiding. Judge Yuzon, upon MPHAI's motion for reconsideration and upon its filing surety bond in the amount of P26,000.00, issued an order dated 11 August 1986 reinstating the writ of preliminary mandatory injunction. Respondent Salandanan, however, in turn moved for reconsideration on the ground that such a writ was not a proper remedy to deliver property in the possession of one party to another. But, before Salandanan's motion could be resolved, the case was, for the third time, re-raffled and transferred this time to the sala of respondent Judge Francisco X. Velez. Judge Velez, on 6 August 1987, issued an order lifting and setting aside the writ, and on 30 March 1988, an order directing the Deputy Sheriff to return and restore to respondent Salandanan the possession of the waterworks system.

And so the present Petition for Certiorari was filed.

The Court issued a Temporary Restraining Order on 6 May 1988 enjoining respondent Judge Velez from enforcing his two (2) orders, ordering petitioner MPHAI to file a bond in the amount of P50,000.00, and requiring private respondent Salandanan to file a Comment on the Petition. After additional pleadings and counter-pleadings, the Court granted due course to the Petition and required the parties to file simultaneous Memoranda. The parties complied; private respondent Salandanan also submitted a Supplemental Memorandum.

Deliberating on the instant Petition for Certiorari and after careful examination of the record of this case, the Court considers that petitioner has failed to show any grave abuse of discretion, or any act without or in excess of jurisdiction, on the part of respondent Judge in issuing the orders dated 6 August 1987 and 30 March 1988, lifting and setting aside the writ of preliminary mandatory injunction earlier issued in Civil Case No. 11124, and ordering private respondent restored to the possession of the waterworks system involved.

A preliminary mandatory injunction is not a proper remedy to take property, possession of which is being disputed, out of the possession and control of one party and to deliver the same to the other party. It may issue pendente lite only in cases of extreme urgency, where the right to the possession, during the pendency of the main case, of the property involved is very clear; where considerations of relative inconvenience bear strongly in favor of the complainant seeking the possession pendente lite; where there was wilful and unlawful invasion of plaintiff's rights, over his protest and remonstrance, the injury being a continuing one; where the effect of the preliminary mandatory injunction is to re-establish and maintain a pre-existing and continuing relationship between the parties, recently and arbitrarily interrupted by the defendant, rather than to establish a new relationship during the pendency of the principal case.[1] Obviously, it is for the party requesting the writ to demonstrate clearly the presence of one or more of the above grounds.

Under the terms and conditions of the amended contract of lease, private respondent Salandanan is entitled to possess and manage the waterworks system for a period of ten (10) years beginning 20 March 1981, unless, of course, the contract is judicially rescinded. Petitioner's action for the rescission of the amended lease contract was pending before the trial court at the time petitioner had recourse to the Supreme Court, and that action, so far as the records before us show, remains pending to this date. Petitioner has failed to show the existence of some extraordinary situation imposing upon it irreparable injury and clearly calling for the issuance and maintenance of the writ of preliminary mandatory injunction. Petitioner alleged that sometime in 1984, the power supply of the water pumps had been cut off by Meralco for failure of private respondent Salandanan to pay his electric bills, resulting in a severe water shortage within the Subdivision. There was, however, no showing that this condition remained subsisting three (3) years later, at the time respondent Judge's orders here assailed were rendered (August 1987 and March 1988) and at the time the Petition for Certiorari was filed (May 1988) before the Supreme Court. There was, in other words, no showing that the severe water shortage had not been remedied at or before the said material times and that a clear and present danger of the same or similar default on Salandanan's part, threatening the same severe consequences for the subdivision residents, persisted. On the contrary, it appears from the record that the Metropolitan Waterworks and Sewerage System ("MWSS") had commenced servicing the Subdivision before issuance of the respondent Judge's orders here sought to be annulled, which circumstance surely reduced the probabilities of recurrence of such breakdown of water supply. Succinctly put, petitioner has not shown that the continued possession of the leased waterworks system by respondent Salandanan created a continuing, clear and imminent danger that the Subdivision would suffer from lack of adequate supply of potable water.

Accordingly, the Court believes that respondent Judge was not merely acting arbitrarily and capriciously in holding that private respondent Salandanan was entitled to be maintained in the possession of the leased waterworks system pending resolution of the on-going action for rescission of the amended contract of lease and amended compromise agreement. At the same time, it appears to the Court that the relations between the petitioner MPHAI and private respondent Salandanan have been strained and frayed by the controversies and litigation between them. In order to protect the Subdivision residents from the hardships that would ensue from any recurrence of the problems encountered in 1984 after delivery of the possession of the waterworks system to private respondent Salandanan, private respondent should be required to post either a cash deposit or a surety bond from a surety company of indubitable solvency, in the amount of P100,000.00, conditioned upon the continued and adequate supply of potable water to Subdivision residents by private respondent and faithful compliance with his other obligations under existing agreements with petitioner. This deposit or bond shall be in addition to any performance bond required from private respondent under existing contractual arrangements. Moreover, it goes without saying that the trial court has full authority to issue such further order or orders as may become necessary to protect adequately the Subdivision residents from disruption of water service within the Subdivision, attributable to the failure of either petitioner MPHAI or private respondent Salandanan to comply with any of their respective contractual obligations during the pendency of the action for rescission of contract.

WHEREFORE, the Petition for Certiorari is hereby DISMISSED for lack of merit. Private respondent Salandanan is hereby REQUIRED to put up either a cash deposit or a surety bond issued by a surety company of indubitable solvency acceptable to this Court in the amount of P100,000.00, within a non-extendible period of ten (10) days from notice hereof, to indemnify the members of petitioner MPHAI for any damages or inconvenience they may suffer by reason of failure of private respondent Salandanan to provide a continuous and adequate supply of potable water and otherwise to comply faithfully with all of his obligations under the amended contract of lease and amended compromise agreement. No pronouncement as to costs. This Resolution is immediately executory.

Fernan, C.J., (Chairman), Gutierrez, Jr., Bidin, and Davide, Jr., JJ., concur.

[1] Acting Registrars of Lands and Deeds v. Regional Trial Court, et al., 184 SCRA 622 (1990); Philippine National Bank v. Adil, 118 SCRA 110 (1982); Mara, Inc. v. Estrella, 65 SCRA 471 (1975); Pio v. Marcos, 56 SCRA 726 (1970); Commissioner of Customs v. Cloribel, 19 SCRA 234 (1967); Iman Sahin v. Montejo, 8 SCRA 333 (1963); and Coronado v. Court of First Instance, 96 Phil. 729 (1955).

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