

NAPOLEON GEGARE, PETITIONER, VS. HON. COURT OF APPEALS (ELEVENTH DIVISION) AND ARMIE ELMA, RESPONDENTS.

G.R. No. 83907. September 13, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The familiar story in the Old Testament is of how King Solomon settled the dispute between two women over a child by deciding that the child be cut into two for them to share. The real mother full of love implored that the King not kill the child and give the child to the other woman. The latter asked the King not to give it to either of them and to go on, cut the child into two.

This case involves a small piece of land. The decision was to cut it into two between the parties. But the parallel ends there. The petitioner wants the whole lot. Private respondent is happy with his half. This is the impasse' that must be resolved.

The center of controversy is Lot 5989, Ts-217 with an area of about 270 square meters situated at Dadiangas, General Santos City. This lot was titled in the name of Paulino Elma under Original Certificate of Title No. (P-29947)(P-11503) P-1987 issued by the Office of the Register of Deeds of General Santos City and Miscellaneous Sales Patent No. V-635. A reversion case was filed by the Republic of the Philippines against Paulino Elma in the Court of First Instance of South Cotabato docketed as Civil Case No. 950, wherein in due course a decision was rendered on January 29, 1973 declaring the title of Paulino Elma null and void and the same was ordered cancelled. The lot was reverted to the mass of public domain subject to disposition and giving preferential right to its actual occupant, Napoleon Gegare.

This decision was affirmed by this Court when We dismissed the petition for review on certiorari filed by the heirs of Elma on March 13, 1974 in G.R. No. L-38069. Thereafter, the writ of execution was issued and the title of Elma to the property was cancelled.

Both petitioner and private respondent filed an application for this lot in the Board of Liquidators (Board for short) in 1975. On June 15, 1976, Resolution No. 606, Series of 1976 was passed by the Board disposing of the lot in favor of petitioner by way of a negotiated sale in conformity with the decision in Civil Case No. 950. Private respondent protested against the application of petitioner and on August 8, 1978, the Board adopted Resolution No. 611, Series of 1978 denying private respondent's protest for the same reason. A request for reconsideration of private respondent was referred by the Board to Mr. Artemio Garlit, liquidator-designee, General Santos Branch, for verification and investigation. After hearings, Mr. Garlit submitted a report to the Manila office recommending division of the lot to the parties. Nevertheless, on March 13, 1981, the Board denied the protest because the case had already been decided by the court.

However, a motion for reconsideration filed by private respondent was favorably considered by the Board in Resolution No. 233, Series of 1981 dated July 8, 1981. Thus, the Board directed the chief of LASEDECO to investigate the occupancy and area of the lot. In this investigation, it was found that only private respondent was

the actual occupant so the LASEDECO chief recommended the division of the property between petitioner and private respondent.

On August 14, 1981, the Board passed Resolution No. 272, Series of 1981 approving said recommendation by dividing the lot equally between the parties at 135.5 square meters each to be disposed to them by negotiated sale.

Both parties appealed to the Office of the President but in a decision dated March 25, 1984, both appeals were dismissed. A motion for reconsideration filed by petitioner was denied on May 29, 1984.

Private respondent paid for the value of 1/2 of the lot and applied for the issuance of a patent. In Resolution No. 185, Series of 1985 adopted on October 7, 1985, the Board gave due course to the application of private respondent and for the issuance of a patent to 1/2 portion of the lot. Petitioner was also advised to file his application and pay for his portion. Thus, Miscellaneous Sales Patent No. 4261 and Original Certificate of Title No. P-5139 were issued to private respondent.

On November 27, 1985, petitioner filed an action for "Annulment and Cancellation of Partition of Lot 5989, Ts-217, situated at Dadiangas, General Santos City and Annulment of Resolutions No. 272 and 185 and/or to Declare them Null and Void" against private respondent and the Board. The suit was docketed as Civil Case No. 3270 in the Regional Trial Court of General Santos City.

On February 11, 1985, private respondent filed a motion to dismiss the complaint on the following grounds: (1) lack of jurisdiction over the subject matter; (2) petitioner has no capacity to sue; (3) petitioner is not a real party-in-interest; and (4) the action is barred by prior judgment. Private respondent added another ground (5) lack of conciliation efforts pursuant to Section 6 of Presidential Decree No. 1508. The motion was granted in an order dated March 18, 1986.

On April 3, 1986, petitioner moved for a reconsideration thereof to which an opposition was filed by private respondent. The motion for reconsideration was granted in an order of April 21, 1986 and private respondent was required to file his responsive pleading. Private respondent filed his answer. On July 10, 1986, private respondent asked for a preliminary hearing of the grounds for the motion to dismiss in his affirmative defenses. This was denied on July 24, 1986.

Hence, private respondent filed a petition for certiorari and prohibition in the Court of Appeals questioning the said orders of the trial court dated April 21, 1986 and July 24, 1986. In due course, a decision was rendered by the appellate court on March 16, 1988 granting the petition, declaring the questioned orders null and void, and directing the trial court to dismiss the civil case for lack of jurisdiction, without pronouncement as to costs. An urgent motion for reconsideration filed by petitioner was denied in a resolution dated May 31, 1988.[1]

Thus, the herein petition wherein petitioner raises the following issues -

"FIRST ASSIGNMENT OF ERROR

THE RESPONDENT COURT ERRED IN DECIDING CA-G.R. SP NO. 12183 WITHOUT FIRST SERVING SUMMONS AND A COPY OF THE PETITION TO THE PRIVATE RESPONDENT IN THE SAID CASE (NOW PETITIONER IN THE INSTANT CASE), THUS, DEPRIVING HIM OF HIS CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW.

SECOND ASSIGNMENT OF ERROR

THE RESPONDENT COURT ERRED IN GIVING DUE COURSE TO THE PETITION OF ARMIE ELMA IN CA-G.R. SP NO. 12183 IN SPITE OF THE FACT THAT THE TWO (2) ORDERS SUBJECT MATTER OF THE PETITION ARE INTERLOCUTORY IN NATURE.

THIRD ASSIGNMENT OF ERROR

THE RESPONDENT COURT ERRED IN HOLDING THAT THE TRIAL COURT HAS NO JURISDICTION OVER CIVIL CASE NO. 3270.

FOURTH ASSIGNMENT OF ERROR

THE RESPONDENT COURT ERRED IN HOLDING THAT THE TRIAL COURT SHOULD HAVE DISMISSED CIVIL CASE NO. 3270 FOR FAILURE OF THE PLAINTIFF TO COMPLY WITH THE PROVISIONS OF P.D. NO. 1508 BEFORE FILING HIS COMPLAINT IN COURT."^[2]

The petition is devoid of any merit.

Under the first assigned error, petitioner alleges that he was not served summons and a copy of the petition so that he was deprived of due process and the respondent court did not acquire jurisdiction over his person.

Private respondent disputes this claim by showing that it was at the address of petitioner appearing in the petition at Liwayway Disco Restaurant and Disco Pub, Ilang-Ilang Street, General Santos City, where petitioner was served a copy of private respondent's "Manifestation and Motion for Early Resolution."^[3] Petitioner's counsel was also served a copy of the resolution dated June 28, 1987,^[4] "Motion for Restraining Order" dated July 28, 1987 and Manifestation dated December 1, 1987.^[5] Indeed, petitioner's counsel filed a motion dated April 4, 1988 seeking a reconsideration of the decision of respondent court^[6] which was denied on May 31, 1988. Obviously, petitioner voluntarily submitted to the jurisdiction of the respondent court and was never deprived of due process.^[7]

Under the second and third assigned errors, petitioner contends that the appellate court erred in giving due course to the petition that assailed the two orders of the court a quo which are interlocutory in character and in holding that the trial court has no jurisdiction over Civil Case No. 3270.

It is precisely to correct the lower court when in the course of proceedings it acts without jurisdiction or in excess thereof or if the trial court judge otherwise acted with grave abuse of discretion that the extraordinary writ of certiorari or prohibition is afforded to parties as a relief. Such writ is available even in respect to interlocutory orders.^[8]

The appellate court correctly ruled that courts of justice will not interfere with purely administrative matters rendered by administrative bodies or officials acting within the scope of their power and authority. The discretionary power vested in the proper executive official, in the absence of arbitrariness or grave abuse so as to go beyond the statutory authority, is not subject to the contrary judgment or control of the courts and is treated with finality.^[9]

When Board Resolution No. 272 was passed in 1981, petitioner appealed to the Office of the President. After his appeal was denied on March 26, 1984, he did not file a petition for review in this court. Thus, the said decision became final and it was duly implemented. We agree that when petitioner filed Civil Case No. 3270, the trial court should have refrained from interfering with said administrative disposition of the chief executive absent any showing of lack or excess of jurisdiction or grave abuse of discretion.

Moreover, petitioner had no capacity to file the questioned suit in the lower court. The real party-in-interest who can seek the nullification of the land grant is the government or the state.[10]

Under the fourth and last, assigned error, petitioner argues that it was erroneous for the appellate court to hold that the case should be dismissed by the lower court for failure to comply with a provision of Presidential Decree No. 1508 before filing the complaint. He alleges that this rule is not applicable in said case for one of the parties therein is the government or any subdivision or instrumentality thereof which is excepted from this requirement under Section 2 of said law.

True it is that the Board is a government instrumentality but the petitioner and private respondent who are also contending parties in the case are residents of the same barangay so Section 6 of Presidential Decree No. 1508 should apply to them as it provides -

"Section 6. Conciliation, pre-condition to filing of complaint. No complaint, petition, action or proceeding involving any matter within the authority of the Lupon as provided in Section 2 hereof shall be filed or instituted in court or any other government office for adjudication unless there has been a confrontation of the parties before the Lupon Chairman or the Pangkat and no conciliation or settlement has been reached as certified by the Lupon Secretary or the Pangkat Secretary attested by the Lupon or Pangkat Chairman, or unless the settlement has been repudiated."

The purpose of this confrontation is to enable the parties to settle their differences amicably. If the other only contending party is the government or its instrumentality or subdivision the case falls within the exception but when it is only one of the contending parties, a confrontation should still be undertaken among the other parties.

WHEREFORE, the petition is DISMISSED. No costs.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Justice Segundino G. Chua was the ponente, concurred in by Justices Celso L. Magsino and Nicolas P. Lapeña, Jr.

[2] Pages 18, 19, 20 and 24, Rollo.

[3] Annexes II and III to Comment; pages 126-128, Rollo.

[4] Annex IV, id; page 129, Rollo.

[5] Annexes V to V-a, id; pages 130-132, Rollo; and Annexes VI-VI-a, id; pages 133-135, Rollo.

[6] Annex 13 to Petition; pages 31-35; Rollo.

[7] *Sumadchat vs. Court of Appeals*, 111 SCRA 488 (1982).

[8] Sections 1 and 2, Rule 65, Rules of Court.

[9] *Ganitano vs. Secretary of Agriculture and Natural Resources*, 16 SCRA 543 (1966); *Meralco Securities Corporation vs. Savellano*, 117 SCRA 804 (1982); and *Florencio Mangubat vs. Crispino de Castro*, G.R. No. L-33892, July 28, 1988.

[10] *Maninang vs. Consolacion*, 12 Phil. 342, 349 (1908).

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