

**GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), PETITIONER,
VS. HON. GENARO C. GINES, JUDGE, RTC, LA UNION, BR. XXVI,
BENGSON COMMERCIAL BUILDING, INC. AND THE COURT OF
APPEALS, RES...**

G.R. No. 85273. March 09, 1993

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

This is a petition for certiorari and prohibition seeking to annul the January 19, 1988 decision[*] of the Court of Appeals in CA-G.R. CV-09361 entitled "Bengson Commercial Bldg., Inc., represented by its President Romualdo F. Bengson, Plaintiff-Appellee versus Government Service Insurance System, Defendant-Appellant" which affirmed the decision[**] of the Regional Trial Court, Branch XXVI, San Fernando, La Union in Civil Case No. 2794 for having been issued in excess of jurisdiction and/or with grave abuse of discretion amounting to lack of jurisdiction and to prohibit the trial court from: a) enforcing the writ of garnishment it issued for the sum of P2,760,000.00 and; b) engaging in the selective piece-meal execution of the Court of Appeals decision.

The antecedent facts are as follows:

Private respondent Bengson Commercial Building, Inc. (BENGSON, for brevity) obtained a loan from the petitioner Government Service Insurance System (GSIS, for brevity) on August 20, 1965 for P1,250,000.00 payable in 15 years at 9% annual interest secured by a mortgage on a parcel of land with buildings thereon covered by Transfer Certificate of Title (TCT) No. T2767 and two other parcels of land covered by TCT No. T5778, all located in San Fernando, La Union, as well as machineries and equipment already existing and those yet to be acquired.

The loan proceeds were made available to BENGSON through checks issued for partial sums on various dates, from November 8, 1965 to September 19, 1968, for a total sum of P1,123,673.09.

On November 23, 1971, BENGSON executed another mortgage contract for a loan of P3,000,000.00, payable in 15 years at 12% annual interest and secured by a mortgage on the same parcels of land located at San Fernando, La Union and two other parcels of land also situated in San Fernando, La Union originally covered by Original Certificate of Title (OCT) No. 323 plus two parcels of land situated in Quezon City covered by TCT Nos. 172452 and 172453.

The proceeds of the second loan were made available to BENGSON through checks issued for partial sums on various dates from December 17, 1971 to July 20, 1973, for a total sum of P1,441,394.43.

On May 26, 1972, BENGSON sold to GSIS nine (9) units of debenture bonds in the total amount of P900,000.00 at 14% annual interest, redeemable in twenty (20) equal quarterly installments.

For having defaulted in the payment of its amortizations, BENGSON received a letter from the GSIS dated

November 13, 1974 stating that unless BENGSON settled its arrearages, the GSIS would foreclose the mortgaged properties. On March 20, 1975, the GSIS instituted extrajudicial foreclosure proceedings through the Provincial Sheriff of La Union. The notice of foreclosure was published in the April 25, May 2 and May 9, 1975 issues of the Ilocos Times and the subject of the auction sale were the parcels of land covered by TCT No. T2767, TCT No. T5778, OCT No. 323 as well as the machineries and equipment under mortgage.

On May 9, 1975, BENGSON paid the GSIS P100,000.00 to apply to its loan accounts. For reasons known only to the parties, the scheduled foreclosure on May 12, 1975 was postponed; and, thereafter, the foreclosure was postponed several more times.

On June 20, 1975, BENGSON made another payment in the amount of P10,000.00.

On August 18 and August 22, 1975, BENGSON addressed two separate letters to the GSIS through its General Manager; the first was a request to restructure its scheduled amortization payments and the second, an application for restructuring and additional loan.

On January 13, 1976, BENGSON received a telegram from a "Garrucho GSIS BILD" (GSIS Manager, Commercial and Industrial Loans Department) which reads: "Please see Mr. Edgardo Ramirez and Mr. Juan Dangla re restructuring Regent". "Regent" was the Regent Theatre Hotel Building [8-storey, 70% complete] located on the two parcels of land covered by TCT No. T5778; the other improvement also located on these two lots was the Bengson Theatre Hotel Building [6-storey, 30% complete].

Between May 9, 1975 to October 11, 1976, BENGSON paid the GSIS a total amount of P286,000.00 to apply to its loan accounts. During the interim, BENGSON and the GSIS were preparing grounds for the grant of an additional loan with or after restructuring the previous two consolidated loan accounts.

On February 10, 1977, the Provincial Sheriff of La Union enforced the foreclosure and conducted a public auction sale wherein the GSIS emerged as the highest bidder, acquiring BENGSON's mortgaged properties at P4,740,000.00. A certificate of sale covering the foreclosed properties was issued four (4) days later. Subsequently, the Register of Deeds of La Union issued to the GSIS these new transfer certificates of title over the foreclosed properties: TCT No. T-10811 cancelling TCT No. 2767, TCT No. T-10812 cancelling TCT No. T5778, and TCT No. 10813 cancelling OCT No. 323.

On March 15, 1977, the GSIS filed with the then Court of First Instance (now Regional Trial Court) an ex-parte petition for the issuance of a writ of possession over the foreclosed properties which the court granted on June 23, 1977 and gave BENGSON ten (10) days within which to file a motion for reconsideration. The court denied the latter's motion for reconsideration on July 29, 1977.

On June 23, 1977, BENGSON filed against the GSIS a petition for annulment of the GSIS's foreclosure of its mortgage loan, restructuring of the loan, cancellation by the La Union Register of Deeds of all sale entries affecting BENGSON's titles over the properties it had mortgaged to the GSIS as security for the loan, and recovery of damages, attorney's fees and costs of suit, docketed as Civil Case No. 2794, with the Court of First Instance (now Regional Trial Court) San Fernando, La Union, Branch XXVI.[1]

Under a deed of conditional sale, on April 22, 1981, the GSIS sold to Family Savings Bank BENGSON's foreclosed parcels of land situated in San Fernando, La Union.[2]

Civil Case No. 2794 was decided by the court a quo, the dispositive portion of which reads:

"1. Declaring the extrajudicial foreclosure of the plaintiff's properties by defendant null and void ab initio and directing defendant to restore plaintiff in possession of said properties; and the Register of Deeds of La Union

to cancel the titles issued to defendant and in lieu thereof to issue new ones in the name of plaintiff;

2. Ordering defendant to restructure the loans of plaintiff amounting to P4,250,000.00 at the legal rate of interest from finality of this judgment;
3. Ordering plaintiff to pay P900,000.00 at the legal rate of interest for the debenture bonds from finality of this judgment;
4. Ordering defendant to reimburse to plaintiff the amount of P1,900,000.00 representing the accrued monthly rentals belonging to plaintiff from February, 1977 and, thereafter, the monthly rental of P20,000.00 until the properties are restore(sic) to the possession of plaintiff; and
5. Ordering defendant to pay costs of suit."^[3]

On appeal, docketed as CA-G.R. Civil Case No. 09361, the judgment appealed from was affirmed by the Court of Appeals with modification, the dispositive portion of which reads:

"WHEREFORE, we affirm the appealed decision with MODIFICATION, as follows:

1. The foreclosure and auction sale on February 10, 1977 of BENGSON's properties covered by real estate and chattel mortgages mentioned in the notice of sale issued by the La Union provincial sheriff are set aside.
2. The writ of possession issued to GSIS as the highest bidder by the defunct Court of First Instance, sitting as a cadastral court, as a consequence of said foreclosure sale, is annulled.
3. The Register of Deeds of La Union is ordered to cancel the present certificates of title covering those properties and issue new ones in lieu thereof in the same names and with the same annotations, terms and conditions, including the mortgage in question, as appeared (sic) in the previous certificates of title as of the date BENGSON constituted the mortgage on those properties in favor of GSIS, it being understood that all expenses to be incurred incidental to such title cancellation and issuance shall be borne by GSIS.
4. GSIS is ordered to restore to BENGSON full possession of those mortgaged properties situated in San Fernando, La Union.
5. All properties under the mortgage in question, including those parcels of land situated in San Fernando, La Union and in Quezon City, shall remain under mortgage in favor of GSIS.
6. GSIS is ordered to restructure BENGSON's loan as promised, the restructuring to proceed from the premise that as of the foreclosure date, i.e. February 10, 1977, BENGSON had paid GSIS an aggregate amount of P286,000.00 on the subject loan.
7. The interest rates per annum stated in the first and second mortgage loan contracts entered into between BENGSON and GSIS, as well as all other terms and conditions provided for therein -- except as qualified by the subsequent agreement of the parties regarding the promised loan restructuring and deferment of foreclosure by reason of the arrearages incurred -- shall remain as originally stipulated upon by the parties.
8. BENGSON is ordered to pay GSIS the debenture bond with an aggregate face value of P900,000.00 at the stipulated interest rate of 14% per annum, quarterly; and to pay 14% interest per annum, compounded monthly, on the interest on said debenture bond, that had become due quarterly, in accordance with the stipulations provided for therein.
9. GSIS shall reimburse BENGSON the monthly rent of P20,000.00 representing income produced by one of the latter's mortgaged properties, i.e. the Regent Theatre building, from February 15, 1977 until GSIS shall have restored the full possession of said building, together with the land on which it stands, to BENGSON.
10. The entire record of this case is ordered remanded to the trial court and the latter is directed to ascertain

whether such mortgaged properties as machineries, equipment, and other movie paraphernalia, etc., are in fact no longer in existence per report of the provincial sheriff, as well as to determine their replacement value if GSIS fails to return them; and, as prayed for by BENGSON, to receive evidence from the parties on the costs of suit awarded to it.

No pronouncement as to cost of this appeal.

SO ORDERED."[4]

The aforequoted decision of the Court of Appeals became final and executory on February 10, 1988[5] and the entire records remanded to the court a quo on March 14, 1988.[6]

BENGSON filed an Omnibus Motion[7] on March 31, 1988 for the implementation of Items Nos. 3, 4, 9 and 10 of the Court of Appeals decision. On April 5, 1988, the GSIS filed its "Comment and Manifestation with Counter Motion"[8] praying that the Motion for Execution of BENGSON be denied in the meantime, without prejudice to the court ordering computation of the respective claims of the parties for the purpose of determining which party is still entitled to receive any amount, if still due and owing, or that the execution be simultaneous.

To determine the replacement value of BENGSON's mortgaged properties, an ocular inspection was conducted on May 23-25, 1988 pursuant to the May 5, 1988 order of the court a quo.[9] In the said meeting, the GSIS was represented by Atty. Octavio del Callar, Director, Litigation Group and Atty. Arturo F. Martinez, Office of the Government Corporate Counsel. A report on the ocular inspection conducted was submitted by the Clerk of Court and the Deputy Sheriff on July 11, 1988[10] and noted by the court on July 19, 1988.[11]

Documentary evidence for the determination of the replacement value of the mortgaged properties in the amount of P37,951,878.00 was submitted by BENGSON on June 6, 1988.[12]

On July 6, 1988, the court a quo issued a resolution/order[13] for the execution of Items 3, 4 and 9 of the Court of Appeals decision and the approval of the documentary evidence presented by BENGSON for the replacement value of the chattels, items, machineries, etc., which were no longer in existence as of May 23, 1988 in the ocular inspection.

BENGSON filed a "Motion for Hearing on Costs of Suit" on July 15, 1988 together with a list of persons from whom moneys were obtained and utilized as "costs of suit".[14] GSIS filed an opposition thereto[15] on July 19, 1988 on the ground that the listing of these persons are hearsay, without probative value and cannot be considered as part of costs of suit.

On the same date, GSIS filed its Motion for Execution[16] of Item No. 8 of the CA Decision which required BENGSON to pay the GSIS debenture bond in the sum of P900,000.00 but which was opposed by BENGSON on July 24, 1988.[17]

A writ of execution was issued on August 22, 1988 for Items Nos. 1 and 2 only of the July 6, 1988 Resolution/Order[18] in view of the motion for reconsideration against Item No. 3 of the said Resolution/Order.[19] Consequently, the certificates of title of the properties of BENGSON were cancelled and new ones were issued in the name of Bengson Commercial Building, Inc. on August 30, 1988[20] and BENGSON was placed in full possession of the properties on August 23, 1988, as per certification of the Clerk of Court of the then CFI of San Fernando, La Union dated August 30, 1988.[21]

GSIS filed its "Motion to Annul Decision" on August 29, 1988 before the Court of Appeals notwithstanding the final and executory character of said decision.[22]

On September 12, 1988, an order was issued by the court a quo denying the GSIS' Motion for Suspension of the

Proceedings on the ground that the decision of the Court of Appeals has become final and executory, and that "the defendant did not lift a finger to question the legality and soundness of the decision" and has even actively participated in the proceeding by presenting evidence in court for the computation of the debenture bond executed by BENGSON in favor of the GSIS.[23]

The trial court issued an order[24] on September 14, 1988 directing the Provincial Sheriff of La Union to effect immediately the notice of garnishment to the Philippine National Bank, Escolta, Manila and garnish the amount of P2.76 Million, as prayed for in the "Ex-Parte Application for Notice of Levy"[25] filed by BENGSON on September 12, 1988. Said notice was served on PNB the following day.

An "Urgent Motion for the Issuance of Restraining Order or Injunction"[26] was filed by the GSIS before the Court of Appeals on September 22, 1988. Said motion, as well as the aforementioned Motion to Annul Decision, was noted without further action.[27]

Pursuant to the notice of garnishment, the account of GSIS with the Philippine National Bank was placed on a "hold code"[28] and the amount of P2.76 Million was released to the custody of Mr. Romualdo Bengson and/or Atty. Pacifico Yadao on October 27, 1988 in compliance with the October 4, 1988 order of the lower court.[29]

On October 14, 1988, GSIS filed this petition for certiorari and prohibition with prayer for a temporary restraining order before this Court after having failed to obtain an order from the trial court to hold in abeyance the execution of the writ of garnishment pending resolution in the Regional Trial Court of San Fernando, La Union of the GSIS's Motion for Reconsideration and Motion to Quash Writ of Garnishment.

A temporary restraining order was issued by this Court on November 16, 1988 enjoining BENGSON from enforcing the decision of the Court of Appeals[30] which unfortunately came late for the P2.76 Million has already been released to BENGSON on October 27, 1988. This Court gave due course to the petition on October 12, 1989 and further required the parties to submit their respective memoranda.[31] BENGSON complied with said requirement on December 5, 1989[32] while the GSIS submitted its memorandum on January 26, 1990.[33]

The principal issue in the case at bar is whether the January 19, 1988 decision of the Court of Appeals, which has been partially executed, can still be challenged.

GSIS contends that the directives embodied in the decision are too vague and incapable of implementation, thereby voiding the entire decision.[34] The directive of the Court of Appeals for the GSIS to "restructure" the loans of BENGSON is incapable of accomplishment because there is nothing in the decision itself, nor in any of the papers submitted by the parties, which gives the parameters as to how said loans will be restructured.[35] Being a void judgment, it may be assailed or impugned at anytime.[36] Furthermore, the directive to restructure, without any given frame of reference, actually infringes on the constitutional right of GSIS to the non-impairment of obligations and contracts and to due process.[37]

BENGSON, on the other hand, contends that GSIS cannot invoke the remedy of certiorari after its failure to appeal the January 19, 1988 decision.[38]

The petition must fail.

As this Court held in *Estoesta, Sr. v. Court of Appeals*,[39] reiterating the ruling in *Agricultural and Industrial Marketing, Inc. v. Court of Appeals*,[40] -

"x x x that perfection of an appeal in the manner and within the reglementary period allowed by law is not only mandatory but also jurisdictional. x x x Thus, if no appeal is perfected on time, the decision becomes final and executory by operation of law after the lapse of the reglementary period of appeal x x x. Being final and

executory the decision in question can no longer be altered, modified or reversed by the trial court or by the appellate court x x x. Accordingly, the prevailing party is entitled as a matter of right, to a writ of execution the issuance of which is a ministerial duty compellable by mandamus. x x x."

As aforementioned, the decision of the Court of Appeals became final and executory on February 10, 1988 as shown in the Entry of Judgment on March 10, 1988 and remanded to the court a quo on March 14, 1988. From there, neither a Motion for Reconsideration nor an appeal was taken by GSIS. As correctly observed by the trial court, the GSIS "did not lift a finger to question the legality and soundness of that decision". At the time the GSIS filed its Motion to Annul Decision before the Court of Appeals, the judgment sought to be annulled has been partially executed for BENGSON has been placed in full possession of the properties. Furthermore, at the time this petition was filed, Items Nos. 6, 8 and 10 of the Court of Appeals decision remain to be satisfied. On top of all these, the GSIS has actively participated in the execution by filing its Motion for Execution of Item No. 8 of the decision and presenting evidence in court for the computation of the debenture bonds in the hearing conducted on August 12, 1988. These acts of participation by the GSIS negate its claim that the directives embodied in the decision are "too vague and incapable of implementation".

To permit a party to appeal from said partially executed final judgment would make a mockery of the doctrine of finality of judgments long enshrined in this jurisdiction.[41]

As regards the allegation of the GSIS that the court a quo "has embarked on a selective and piece-meal execution/enforcement of the decision of the Court of Appeals, enforcing only those portions of the decision favorable to private respondent, Bengson Commercial Building, Inc., and ignoring or disregarding those portions of the decision of the Court of Appeals favorable to the petitioner, GSIS", this Court has held that a case in which execution has been issued is regarded as still pending so that all proceedings in the execution are proceedings in the suit. Unquestionably, the court which rendered the judgment has a general supervisory control over its process of execution. This power carries with it the right to determine every question of fact and law which may be involved in the execution.[42]

PREMISES CONSIDERED, the petition is hereby DENIED. The temporary restraining order issued on November 16, 1988 is lifted.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Nocon, JJ., concur.

[*] Penned by Associate Justice Jesus M. Elbinias and concurred in by Associate Justices Oscar M. Herrera and Emeterio C. Cui.

[**] Penned by Judge Genaro C. Gines.

[1] Rollo, p. 94.

[2] Court of Appeals Decision, pp. 1-5; Rollo, pp. 496--500.

[3] Court of Appeals Decision, pp. 6-7; Rollo, pp. 501-502.

[4] Rollo, pp. 516-517.

[5] Ibid., p. 157.

[6] Ibid., p. 158.

[7] Ibid., p. 159.

- [8] Ibid., p. 163.
- [9] Ibid., pp. 97-98.
- [10] Ibid., pp. 208-209.
- [11] Ibid., p. 210.
- [12] Rollo, pp. 224-232.
- [13] Ibid., pp. 179-186.
- [14] Ibid., pp. 460-465.
- [15] Ibid., pp. 466-467.
- [16] Ibid., pp. 468-469.
- [17] Ibid., pp. 471-476.
- [18] Rollo, pp. 279-280.
- [19] Ibid., pp. 247-254.
- [20] Ibid., pp. 550-557.
- [21] Ibid., p. 558.
- [22] Ibid., p. 299.
- [23] Ibid., pp. 331-332.
- [24] Ibid., pp. 333-334.
- [25] Rollo, pp. 329-330.
- [26] Ibid., pp. 337-341.
- [27] Ibid., p. 342.
- [28] Ibid., p. 349.
- [29] Ibid., p. 387.
- [30] Rollo, pp. 455-457.
- [31] Ibid., p. 711.
- [32] Ibid., p. 714.
- [33] Ibid., p. 776.
- [34] Ibid., p. 796.
- [35] Ibid., p. 798.
- [36] Ibid., p. 799.
- [37] Ibid., p. 800.
- [38] Rollo, p. 760-761.

[39] 179 SCRA 203, 211-212 (1989).

[40] 118 SCRA 49 (1982).

[41] Insular Bank of Asia and America Employees' Union (IBAAEU) v. Inciong, 132 SCRA 663 (1984).

[42] Suson v. Court of Appeals, 172 SCRA 70 (1989), reiterating the ruling in Seavan Carrier, Inc. v. GTI Sportswear Corporation, 137 SCRA 580 (1985) and Vda. de Paman v. Señeris, 115 SCRA 709 (1982).

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