

ENEDINA PRESLEY, PETITIONER, VS. BEL-AIR VILLAGE ASSOCIATION, INC., AND THE HON. COURT OF APPEALS, RESPONDENTS.

G.R. No. 86774. August 21, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for review of the decision of the Court of Appeals promulgated on November 28, 1988 affirming the decision of the Regional Trial Court in toto. The dispositive portion of the decision reads:

"WHEREFORE, the defendants are enjoined permanently from using the property in question as a pan de sal store or from using it for any other commercial purposes; the defendants are ordered to pay, jointly and severally, the plaintiff the sum of P3,803.55 with legal interest from February 9, 1981 until the said sum is fully paid and the defendants are further ordered to pay, jointly and severally, the sum of P4,500.00 as and for attorney's fees." (Rollo, p. 30)

The facts as stated by the Court of Appeals are as follows:

"A complaint for specific performance and damages with preliminary injunction was filed by plaintiff-appellee, Bel-Air Village Association, Inc. (BAVA, for short) against Teofilo Almendras and Rosario Almendras (now both deceased and substituted by defendant-appellant Enedina Presley, for violation of the Deed Restrictions of Bel-Air Subdivision that the subject house and lot shall be used only for residential and not for commercial purposes and for non-payment of association dues to plaintiff BAVA amounting to P3,803.55.

The Almendrases were at the time of the filing of the action the registered owners of a house and lot located at 102 Jupiter Street, Bel-Air Village, Makati, Metro Manila. As such registered owners, they were members of plaintiff BAVA pursuant to the Deed Restrictions annotated in their title (TCT No. 73616) over the property in question and defendant Presley, as lessee of the property, is the owner and operator of a 'Hot Pan de Sal Store' located in the same address.

At the time the Almendrases bought their property in question from Makati Development Corporation, the Deed Restrictions (Exh. "C") was already annotated in their title (Exh. "B") providing (among others) 'that the lot must be used only for residential purpose' (Exh. "B-1" and "B-2).

When BAVA came to know of the existence of the 'Pan de sal' store, it sent a letter to the defendants asking them to desist from operating the store (Exh. "D").

Under the existing Deed Restrictions aforesaid, the entire Bel-Air Subdivision is classified as a purely residential area, particularly, Jupiter Road which is owned by and registered in the name of BAVA.

It has likewise been established that the Almendrases had not paid the BAVA membership dues and assessments which amounted to P3,802.55 as of November 3, 1980. Teofilo Almendras contended that there was no written contract between him and appellee BAVA. Only a consensual contract existed between the

parties whereby Almendras regularly pays his dues and assessments to BAVA for such services as security, garbage collection and maintenance and repair of Jupiter Street. However, when the services were withdrawn by appellee BAVA, there was no more reason for the latter to demand payment of such dues and assessments." (Rollo, pp. 30-31)

After due hearing on the merits, the trial court rendered the decision in favor of BAVA which was affirmed by the respondent Court of Appeals.

On January 20, 1989, the Court of Appeals denied the Motion for Reconsideration.

Consequently, the petitioner filed the instant petition with this Court raising the following issues, to wit:

A

THE RULING OF RESPONDENT COURT OF APPEALS IS NOT IN ACCORDANCE WITH THE RECENT CONSOLIDATED DECISION EN BANC OF THIS HONORABLE SUPREME COURT PROMULGATED DECEMBER 22, 1988 IN RE SANGALANG, BEL-AIR VILLAGE ASS. INC. v. INTERMEDIATE APPELLATE COURT AND AYALA CORPORATION — G.R. NO. 71169; BEL-AIR VILLAGE ASSO. INC. v. TENORIO, ET AL. — G.R. NO. 74376; BEL-AIR VILLAGE ASSOCIATION, INC. v. COURT OF APPEALS AND ROMUALDEZ, ET AL. — G.R. NO. 76394; BEL-AIR VILLAGE ASS. INC. v. COURT OF APPEALS AND FILLEY, ET AL. — G.R. NO. 78182; BEL-AIR VILLAGE ASSOCIATION, INC. v. COURT OF APPEALS AND MONCAL, ET AL. — G.R. NO. 82281, WHICH CONSOLIDATED DECISION APPLIES ON ALL FOURS IN THE CASE AT BAR IN FAVOR OF PETITIONER.

B

TIE RULING OF RESPONDENT COURT OF APPEALS ADJUDGING PETITIONER SOLIDARILY LIABLE TOGETHER WITH THE ALMENDRASES TO PAY THE ALLEGED UNPAID ASSOCIATION DUES IS PATENTLY CONTRARY TO THE EVIDENCE AND FACTS.

C

THE RULING OF RESPONDENT COURT OF APPEALS ADJUDGING PETITIONER SOLIDARILY LIABLE TO PAY ATTORNEY'S FEES IS WITHOUT ANY LEGAL OR FACTUAL BASIS. (Rollo, p. 11-12)

During the pendency of the case with this Court, petitioner Enedina Fox Presley died on January 4, 1991. She was substituted by her two daughters as heirs, namely Olivia V. Pizzaro and Consuelo V. Lacson.

The issues raised in the instant petition have already been dealt with in the consolidated cases decided by this Court promulgated on December 22, 1988 entitled Sangalang, et al. v. Intermediate Appellate Court and Ayala Corporation, G.R. No. 71169; Bel-Air Village Association, Inc. v. Intermediate Appellate Court and Rosario de Jesus Tenorio and Cecilia Gonzalvez, G.R. No. 74376; Bel-Air v. Court of Appeals and Eduardo and Buena Romualdez, G.R. No. 76394; BAVA v. Court of Appeals, Dolors Filley and J. Romero Associates, G.R. No. 78182; and BAVA v. Court of Appeals, Violeta Moncal and Majal Development Corp., G.R. No. 82281. (168 SCRA 634 [1988])

Apparently, when the respondent court promulgated the questioned decision on November 28, 1988 the Sangalang case had not yet been decided by this Court. It was however, aware of the pending case as it made mention of the several cases brought to court by BAVA against the aforesaid commercial establishments.

The petitioner in the instant case is similarly situated as the private respondents in G.R. Nos. 74376; 76394, 78182 and 82281 who converted their residential homes to commercial establishments; hence, BAVA filed suits against

them to enforce the Deeds of Restrictions annotated in their titles which provide among others, "that the lot must be used only for residential purposes."

The Court in the Sangalang case, however, held:

xxx xxx xxx

"x x x In the Sangalang case, we absolve the Ayala Corporation primarily owing to our finding that is not liable for the opening of Jupiter Street to the general public. Insofar as these petitions are concerned, we likewise exculpate the private respondents, not only because of the fact that Jupiter Street is not covered by the restrictive easements based on the 'deed restrictions' but chiefly because the National Government itself, through the Metro Manila Commission (MMC), had reclassified Jupiter Street into a 'high density commercial (C-3) zone,' (See rollo, G.R. No. 71169, id., 117) pursuant to its Ordinance No. 81-01. Hence, the petitioners have no cause of action on the strength alone of the said 'deed restrictions.'" (p. 667; Italics supplied)

In the instant petition, BAVA assails the Court's decision in the Sangalang case, more specifically the Court's interpretation of Ordinance No. 81-01 passed by the Metro Manila Commission (MMC) on March 14, 1981. It avers that due to the multitude of issues raised and the numerous pleadings filed by the different contending parties, the Court was misled and unfortunately erred in concluding that Jupiter Street was re-classified as a "high density commercial (C-3) zone" when in fact, it is still considered as a "(R-1) residential zone."

If indeed private respondent's observations were accurate, the Court will certainly not hesitate to correct the situation and the case at bar would be the proper occasion to do so. We have carefully examined the pleadings but have found no reason to reconsider the Sangalang doctrine. In assailing the Court's decision, the private respondent has come out with mere assertions and allegations. It failed to present any proofs or convincing arguments to substantiate its claim that Jupiter Street is still classified as a residential zone. (See *Filinvest v. Court of Appeals*, 182 SCRA 664 [1990]) No new zoning reclassification, ordinance, certification to the effect or jurisprudence for that matter was brought to the attention of this Court which would necessarily compel us to take a second look at the Sangalang Case. The Court cannot reverse a precedent and rule favorably for the private respondent on the strength of mere inferences.

The respondent court in the case at bar was not at all entirely wrong in upholding the Deed of Restrictions annotated in the title of the petitioners. It held that the provisions of the Deed of Restrictions are in the nature of contractual obligations freely entered into by the parties. Undoubtedly, they are valid and can be enforced against the petitioner. However, these contractual stipulations on the use of the land even if said conditions are annotated on the torrens title can be impaired if necessary to reconcile with the legitimate exercise of police power. (*Ortigas & Co. Limited Partnership v. Feati Bank and Trust Co.*, 94 SCRA 533 [1979]).

We reiterate the Court's pronouncements in the Sangalang case which are quite clear:

"It is not that we are saying that restrictive easements, especially the easements herein in question, are invalid or ineffective. As far as the Bel-Air subdivision itself is concerned, certainly, they are valid and enforceable. But they are, like all contracts, subject to the overriding demands, needs, and interests of the greater number as the State may determine in the legitimate exercise of police power. Our jurisdiction guarantees sanctity of contract and is said to be the 'law between the contracting parties,' (Civil Code, supra, art. 1159) but while it is so, it cannot contravene 'law, morals, good customs, public order, or public policy.' (supra, art. 1306) Above all, it cannot be raised as a deterrent to police power, designed precisely to promote health, safety, peace, and enhance the common good, at the expense of contractual rights, whenever necessary. x x x" (p. 667)

Jupiter Street has been highly commercialized since the passage of Ordinance No. 81-01. The records indicate that commercial buildings, offices, restaurants, and stores have already sprouted in this area. We, therefore, see no

reason why the petitioner should be singled out and prohibited from putting up her hot pan de sal store. Thus, in accordance with the ruling in the Sangalang case, the respondent court's decision has to be reversed.

With respect to the demand for payment of association dues in the sum of P3,803.55, the records reveal that this issue is now moot and academic after petitioner Presley purchased the property subject of lease from the Almendras and settled all association dues.

Likewise, the demand for payment of attorney's fees is now without legal or factual basis.

WHEREFORE, the petition is hereby GRANTED. The decision of the respondent court dated November 28, 1988 is REVERSED and SET ASIDE. The complaint of the private respondent is DISMISSED.

SO ORDERED.

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

Feliciano, J., no part.

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