

**MARIANO DINGLASAN AND FELICIDAD DINGLASAN, PETITIONERS,
VS. THE HON. MARIA ALICIA M. AUSTRIA, PRESIDING JUDGE OF
BRANCH 159, REGIONAL TRIAL COURT, PASIG, METRO MANILA,
NATIONAL ...**

G.R. No. 87264. December 03, 1990

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for certiorari and prohibition with prayer for the issuance of a restraining order seeking the annulment of the November 17, 1988 and February 20, 1989 Orders of the Regional Trial Court of Pasig, presided over by herein respondent Judge Maria Alicia M. Austria, in Civil Case No. 15363, ordering the issuance of a writ of execution and denying the motion for reconsideration, respectively.

Spouses Mariano Dinglasan and Felicidad Dinglasan, herein petitioners, on June 2, 1961, mortgaged their real property covered by Transfer Certificate of Title No. 88001 of the Registry of Deeds of Rizal (a residential lot at 268 Haig St., Mandaluyong, Rizal, consisting of 1,088 square meters more or less; and a residential building constructed thereon) to respondent Government Service Insurance System (GSIS) to secure a loan of P30,000.00, payable within ten (10) years in monthly installment of P452.86. Respondent GSIS, in its letter of September 5, 1966, petitioners being 56 months in arrears in the payment of their loan, gave them fifteen (15) days from receipt thereof within which to update their account. When they failed, respondent GSIS, on January 3, 1967, filed an application for the extra-judicial foreclosure of the mortgage with the Office of the Sheriff in Pasig, Rizal. The auction sale was originally scheduled on February 14, 1967 but was transferred to March 14, 1967 because of the proposal of petitioner Mariano Dinglasan as to how he will liquidate his account, to which, respondent GSIS agreed subject to the condition that "if he fails then go through with the foreclosure." (Exh. 15-A, p. 118, Record). On February 8, 1967, petitioner Mariano paid respondent GSIS the amount of P5,000.00 and accordingly, an agreement to postpone was prepared, transferring the auction sale from February 14, 1967 to March 14, 1967. Petitioner did not pay the amount of P500.00 during the first two (2) weeks of March and as such, the auction sale proceeded on March 14, 1967, and respondent GSIS, being the highest bidder, offering the amount of P52,731.00, was awarded the sale. Petitioners having failed to redeem the property, the same was sold to herein private respondent Concepcion T. Tinio, the highest bidder in the sealed public bidding.

On October 30, 1971, petitioners filed with the then Court of First Instance of Pasig a Complaint for declaration of nullity of the extra-judicial sale with preliminary injunction, docketed therein as Civil Case No. 15363. In the same, petitioners claimed that respondent GSIS unlawfully caused the extra-judicial foreclosure of the mortgaged property without complying with the requirements of posting and publication of the notices and in buying for itself the said property at an inadequate price. Petitioners asked for the nullification of the extra-judicial foreclosure sale of the mortgaged property.

The then Court of First Instance of Rizal, presided over by Judge Celso L. Magsino, after trial, in a Decision dated

July 29, 1976 (Rollo, pp. 19-34), dismissed the complaint

"IN VIEW OF THE FOREGOING, the Court dismisses complaint, with costs against the plaintiffs.

"The writ of preliminary injunction is hereby lifted and set aside.

"The counterclaim is likewise dismissed."

Petitioners filed an appeal, CA-G.R. No. 60654-R, and the Court of Appeals, in a Decision promulgated on July 27, 1979 (Ibid., pp. 35-49), reversed and set aside the appealed decision -

"WHEREFORE, the appealed judgment is reversed and set aside, and another is hereby rendered (a) declaring null and void the extra-judicial foreclosure sale of the property in question held on March 14, 1967, the certificate of title issued in the name of the defendant Government Service and Insurance System and all proceedings relative thereto, and (b) enjoining permanently the defendants and all persons acting in their behalf from dispossessing, or ejecting the plaintiffs from the subject property. No pronouncement as to costs."

Respondent GSIS filed a petition for certiorari in this Court, G.R. No. 52180, and the Second Division of this Court issued Resolution dated December 8, 1980 (Ibid., p. 50), which reads:

"G.R. No. 52180 (Government Service Insurance System vs. Court of Appeals, et al.). - Considering the pleadings filed in this case, the Court Resolved to require petitioner to IMPLEAD Mrs. Concepcion I. Tinio and for the latter party to COMMENT within ten (10) days from service of the amended petition, of which service this Court must be notified by petitioner, why private respondents may not be allowed, as a matter of equity at least, to pay all their outstanding arrearages to the petitioner within ninety (90) days from the time they receive her comment and the comment of petitioner, on the condition that upon another failure of private respondents to comply, the sale to Mrs. Tinio shall be deemed final and the right to redeem of respondents finally lost."

Respondent GSIS, in compliance, filed an amended petition impleading respondent Tinio; and the Second Division of this Court issued a Resolution dated January 27, 1982 (Ibid., p. 51), which reads:

"G.R. No. 52180 (Government Service Insurance System vs. Court of Appeals, et al.) - Acting on the (GSIS) amended petition herein, the Court resolved to DENY the same, without prejudice to the parties including Concepcion I. Tinio being bound by the terms of the resolution of December 8, 1980, whereby the rights of respondent Tinio would immediately be effective upon failure of the Dinglasans to comply with said resolution."

After the records of this case were remanded to the trial court, Judge Celso L. Magsino issued an Order dated May 31, 1985 (Ibid., pp. 52-53) the dispositive portion of which, reads:

"In implementation of the decision of the Supreme Court which has become final and executory, the Court gives the plaintiffs sixty (60) days from notice hereof within which to vacate the subject premises and deliver the same to Concepcion I. Tinio who is ordered to pay the balance of her outstanding account in connection with the sale of the subject premises to her by the Government Service Insurance System (GSIS) within a period of sixty (60) days from notice hereof, and upon said payment, the GSIS is ordered to execute the corresponding deed of sale."

On June 7, 1985, petitioners filed with this Court an Omnibus Motion (Ibid., pp. 82-84), praying that respondent GSIS be required to inform them of their exact arrearages and to accept payment of the same or in the alternative that they be allowed to deposit the same in a reputable bank in trust for respondent GSIS, and that the court a quo be restrained from issuing a writ of possession in favor of respondent Tinio. This was followed by a Supplemental Motion on June 27, 1985, reiterating the prayer for a restraining order. However, this Court, in a Resolution dated

October 11, 1988 (Ibid., p. 54), stated -

"Entry of judgment having been made on February 22, 1982, this case was CLOSED and TERMINATED in this Court as of that date. Accordingly, all incidents transpiring thereafter are REFERRED to the trial court, which is DIRECTED to resolve the same within thirty days from notice hereof."

Thereafter, the trial court, now presided over by respondent judge, issued the questioned Order of November 17, 1988 (Ibid., pp. 89-90), wherein it is ordered that "[U]pon submission to this Court of the deed of sale executed by defendant GSIS, let writ of execution issue requiring the plaintiffs to vacate the subject premises and deliver the same to said Concepcion I. Tinio."

Petitioners moved for the reconsideration of the said order, arguing that if there is any judgment to be executed at all, it is the decision of the Court of Appeals which set aside the foreclosure sale and the sale to respondent Tinio, and which permanently enjoined respondent GSIS from disturbing the possession of petitioners. However, in an Order dated February 20, 1989 (Ibid., pp. 91-92), the motion was denied by respondent judge -

"In view thereof, the present Motion for Reconsideration is hereby denied for lack of merit.

"Considering the report of counsel for Concepcion T. Tinio that she had actually paid the GSIS the amount due, the latter is hereby ordered to execute the corresponding Deed of Sale in favor of said Concepcion Tinio, within fifteen (15) days from notice hereof; otherwise, the Court will order the Clerk of Court of this Court to execute the corresponding Deed of Sale in favor of Concepcion Tinio in order that the final decision of this Court may be finally enforced and executed."

Hence, the instant petition.

The Second Division of this Court, in a Resolution dated March 29, 1989 (Ibid., p. 62), resolved to require the respondents to comment; and after the parties had submitted the required pleadings, in a Resolution dated August 2, 1989 (Ibid., p. 115), gave due course to the petition.

Petitioners raised two (2) issues, to wit:

I

CAN RESPONDENT TRIAL JUDGE EXECUTE A JUDGMENT OF THE COURT OF FIRST INSTANCE OF RIZAL IN CASE NO. 15363, WHICH WAS REVERSED EN TOTO BY THE COURT OF APPEALS IN CA-G.R. NO. 60654-R AND WHICH REVERSAL WAS AFFIRMED BY THE SUPREME COURT IN G.R. NO. 52180?

II

DID THE RESOLUTIONS OF THIS HONORABLE COURT DATED DECEMBER 8, 1980 AND JANUARY 27, 1982. (ANNEXES "C" AND "D", RESPECTIVELY, OF PETITION) IN G.R. NO. 52180, SET ASIDE THE DECISION OF THE COURT OF APPEALS IN CA-G.R. NO. 60654-R AND IN EFFECT MERELY GAVE PETITIONERS A GRACE PERIOD OF 90 DAYS TO REDEEM THE PROPERTY IN QUESTION; OTHERWISE, THEY LOST THEIR EQUITABLE RIGHT TO REDEEM?

The instant petition is devoid of merit.

The second issue raised by petitioners is the main and crucial issue in this case since if the same is answered in the affirmative, the sale to respondent Concepcion T. Tinio will be deemed final and the right to redeem of petitioners finally lost.

It is the contention of petitioners that the December 8, 1980 resolution of the Court did not give them any right of

redemption nor did it impose the penalty of the loss of the right to redeem upon failure of petitioners to exercise said right within ninety (90) days. They further alleged that the said resolution only asked respondent Tinio to comment on the proposal of giving petitioners time to exercise the right of redemption, subject to the penalty of loss of the right by petitioners, in case of their failure.

Petitioners' contention is untenable. The said resolution laid down a term for petitioners to pay all the arrearages within ninety (90) days from the time they receive the comments of respondents Tinio and GSIS, on the condition that upon another failure of petitioners to comply, the sale to respondent Tinio shall be deemed final and the right to redeem of petitioners finally lost. If the Court, as claimed by petitioners, merely required respondent Tinio to comment on the possibility of granting petitioners a last opportunity to redeem, then there would have been no need to impose the definite period to redeem the property. Besides, petitioners themselves, in their Omnibus Motion, contrary to their claim now, is of the same interpretation or construction of said resolution of December 8, 1980. Paragraph 3 of their said motion, reads:

“3. That only recently movants discovered of the Resolution of this Honorable Court dated December 8, 1980, allowing them to pay all their outstanding arrearages to the GSIS within ninety (90) days from the time they receive Comment and the Comment of petitioner;” (p. 82, Rollo)

PREMISES CONSIDERED, this instant petition is hereby DISMISSED.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, Sarmiento, and Regalado, JJ., concur.

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