

JUANITO A. ROSARIO, PETITIONER, VS. THE HON. COURT OF APPEALS, AND ALEJANDRO CRUZ, RESPONDENTS.

G.R. No. 89554. July 10, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This is a petition for review of the decision of the Court of Appeals affirming the order dated December 13, 1988 of the Regional Trial Court of Manila, Branch 27, in Civil Case No. 82-14645 "Juanito Rosario vs. Alejandro Cruz and the City of Manila" dismissing his action to annul and set aside the City Tenants' Security Commission's Resolution No. 018-78, revoking the award to him of Lot 3-A (with an area of 56.6 square meters), being a portion of Lot 3, Block 3 of the former Teresa Estate II in Sampaloc, Manila, and awarding it to the protestant, private respondent Alejandro Cruz.

Pursuant to its "Land for the Landless Program," the City of Manila, through its City Tenants' Security Commission, undertook to subdivide and award parcels of land of the former Teresa Estate II, in Sampaloc, Manila, to the occupants thereof. Lot 3, Block 3 was subdivided into three lots, designated as Lots 3-A, 3-B and 3-C with areas of 56.5 square meters each.

In 1958, private respondent Alejandro Cruz, who was the original lessee of the area, subsequently designated as Lots 3-A and 3-C, constructed a residential house thereon. In the same year, he sublet his house on Lot 3-A to the petitioner at a nominal monthly rental of P20, which was later increased to P50 per month. Cruz moved to 1774 Mindanao Avenue, Sampaloc, Manila.

Availing of the City's "Land for the Landless Program," both parties filed with the City Tenants' Security Commission, their applications to purchase Lots 3-A and 3-C. On June 24, 1977, Lot 3-A was awarded to Rosario while Lot 3-C was awarded to Cruz.

Not satisfied with just Lot 3-C, Cruz opposed the award of Lot 3-A to Rosario on the ground that, as a mere lessee of Cruz's house, and not a houseowner-applicant, he could not qualify as a "bona fide occupant" because his possession as a sublessee was in effect his lessor's (Cruz's) possession. Cruz alleged that, at most, Rosario may only enjoy second priority to purchase Lot 3-A in accordance with the guidelines of the Committee. The petitioner, on the other hand, claimed a preferential right to purchase Lot 3-A based on social justice and his uninterrupted possession of said lot for thirty-two (32) years, or since 1958.

After conducting an investigation, the City Tenants' Security Commission issued a Resolution No. 018-78 dated December 8, 1978 revoking the award of Lot 3-A to Rosario and awarding it to Cruz (Annex A, p. 20, Rollo).

In 1982, or four (4) years later, petitioner filed an "action to quiet title" in the Court of First Instance of Manila, Branch 27, praying for the annulment of Resolution No. 018-78 of the City Tenants' Security Commission.

In an order dated August 22, 1988 (Annex D, p. 23, Rollo), the Regional Trial Court dismissed the complaint on the ground that plaintiff had not been denied procedural due process, and that he failed to exhaust administrative

remedies for he should have appealed the resolution of the City Tenants' Security Commission to the Office of the President before seeking a judicial review thereof. As no appeal had been taken in due time, the resolution became final and executory.

The petitioner received the decision of the Regional Trial Court on September 1, 1988. On September 15, 1988, the petitioner filed in the Supreme Court a motion for extension of time to file a petition for review. Apparently changing his mind, instead of filing a petition for review in the Supreme Court, he filed a motion for reconsideration of the aforesaid judgment on October 14, 1988. Respondent Judge, in an order dated November 15, 1988, denied the motion for reconsideration for having been filed late, the decision having already attained finality (Annex O, Petition; p. 58, Rec.).

On December 8, 1988, petitioner filed a notice of appeal, which the trial court dismissed on December 13, 1988 for tardiness.

Petitioner thereafter filed a petition for certiorari and mandamus in the Court of Appeals (CA-G.R. No. 16755-SP). It was likewise denied by the Court of Appeals on July 25, 1989 on the grounds that:

- (1) the appealed judgment had attained finality; and
- (2) ordinary appeal, not certiorari, was the proper remedy as petitioner failed to allege grave abuse of discretion on the part of the trial court.

Hence, this petition for review under Rule 45.

The main issue raised by the petitioner is whether or not being the sublessee and "actual occupant" of Lot 3-A, he has the preferential right to buy said lot.

Unfortunately, both the trial court and the Court of Appeals skirted that legal issue and simply dismissed Rosario's petition for review of the Resolution of the City Tenants' Security Commission on the grounds of non-exhaustion of administrative remedies and tardiness.

Failure to exhaust administrative remedies is not, however, necessarily fatal to an action. Thus did we rule in *Soto vs. Jareno*, 144 SCRA 116:

"Failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court. We have repeatedly stressed this in a long line of decisions. The only effect of non-compliance with this rule is that it will deprive the complainant of a cause of action, which is a ground for a motion to dismiss. If not invoked at the proper time, this ground is deemed waived and the court can then take cognizance of the case and try it."

It does not appear in this case that a motion to dismiss based on non-exhaustion of administrative remedies had been filed. We therefore feel, as we did in a number of cases before this, that "where the equities warrant such extraordinary recourse," the petition may be given due course (*Marahay vs. Melicor, et al.*, 181 SCRA 811 citing *Perlas vs. Concepcion*, 34 Phil. 559; *Alfonso vs. Yatco*, 80 Phil. 407).

"But while it is evident that there was error in the remedy resorted to, this Court in the broader interests of justice has in a number of cases given due course to a petition for certiorari, although the proper remedy is appeal especially where the equities warrant such recourse and considering that dismissals on technicalities are viewed with disapproval." (*Tesorero vs. Mathay*, 185 SCRA 124, 125.)

Interpreting Section 1 of Commonwealth Act No. 539 (after which the City Tenants' Security Commission was modelled) this Court in *Santiago, et al. vs. Cruz, et al.* (98 Phil. 168, 169) stressed that "the intendment of the law is to award the lots to those who may apply in the order mentioned" that is, the "first choice is given to the bona

fide 'tenants' the second to the 'occupants' and the last to 'private individuals.'"

Later, this Court clarified, in the case of *Gutierrez vs. Santos, et al.* (107 Phil. 419), that "the bona fide tenant" loses his right of first preference to the actual occupant when he "has already in his name other lots more than what he needs for his family, for certainly to give him preference would work injustice to the occupants."

The records show that respondent Cruz and his family are residing at 1774 Mindanao Avenue. Having no need for his house on Lot 3, he sublet it to others, namely, petitioner Juanito Rosario and one Genaro Angud. "Justice and equity command that petitioner [in this case, Rosario] be given the preferential right to purchase the lot he occupies in order to carry out the avowed policy of the law to give land to the landless" (*Gongon vs. Court of Appeals*, 32 SCRA 412, 418).

In *Manila Pencil Company vs. Trazo* (77 SCRA 181), this Court similarly stated:

"x x x petitioner herein x x x can in no sense be considered as the occupant contemplated in the statute. It is clear to Us that notwithstanding that private respondents have been occupying the buildings constructed by petitioner lessees of portions of said buildings, the legislative intent was to benefit not the owner of said building but the actual occupants thereof. We cannot see how the commendable and benevolent objective of the statute to solve 'the social problems that the present condition of the occupants of the property in question may give rise to' can be pursued by recognizing petitioner as having a better right than private respondents under the law. The Act is indubitably a social legislation. From that perspective, a choice between the respective situations of the petitioners, on the one hand, and the private respondents, on the other, cannot but favor the latter."

In the same vein, we held in *Tañag vs. Executive Secretary* (37 SCRA 806, 807):

"x x x If the claim of a sublessee actually in possession would be ignored or disregarded, the result would be to heighten social tension and aggravate further the unrest that has its roots in so many of our countrymen being denied the opportunity of owning even a small piece of land on which their houses are built and wherein they reside. It has been the constant policy of this Court, in the construction of laws that find its origin in the social justice mandate of the Constitution, to assure that its beneficent effects be enjoyed by those 'who have less in life.'"

Clearly, to dismiss petitioner's appeal on a procedural ground would not serve the ends of justice.

However, it would be inequitable to allow the petitioner, as new owner of Lot 3-A, to occupy that part of private respondent's house built thereon without reimbursing the latter for one-half of its value as provided in Article 1678 of the Civil Code.

"Art. 1678. If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.

"With regard to ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects, provided, no damage is caused to the principal thing, and the lessor does not choose to retain them by paying their value at the time the lease is extinguished."

WHEREFORE, the decision of respondent court in CA-G.R. SP No. 16755 is hereby REVERSED and SET ASIDE. The award of Lot No. 3-A, Block 3, of the former Teresa Estate II (now known as 1909-C Mindanao Avenue, Sampaloc, Manila) to the private respondent, Alejandro Cruz, by the City Tenants' Security Commission under its Resolution No. 018-78 dated December 8, 1978, is annulled and set aside. Petitioner Juanito A. Rosario

is declared to have a preferential right to purchase Lot No. 3-A, and the City Tenants' Security Commission is ordered to award the sale thereof to him. Petitioner Rosario may either reimburse respondent for one-half of the value of the part of Cruz's house situated on Lot 3--A and occupied by petitioner, or allow Cruz to remove his house at his own expense. If petitioner exercises the first option, the value of the improvement shall be determined by a committee composed of the parties or their authorized representatives, and a representative of the trial court. Costs against the private respondent.

SO ORDERED.

Medialdea and Bellosillo, JJ., concur.

Cruz, J., (Chairman), in the result.

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