

STATE INVESTMENT HOUSE, INC., PETITIONER, VS. COURT OF APPEALS, SECURITIES AND EXCHANGE COMMISSION, EDGAR OBLIMAR, ABE ESTRADA AND THE 2,081 COMPLAINANTS-LABORERS IN NLRC CASE N...

G.R. No. 89767. February 19, 1992

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

These consolidated petitions involve properties formerly owned by the Philippine Blooming Mills, Inc. (PBM) which is now under the rehabilitation and receivership of the Securities and Exchange Commission (SEC Case No. 2250, "In the matter of the Petition for Suspension of Payments").

In G. R. No. 89767, the petitioner questions the decision of the Court of Appeals which affirmed the validity of the Order dated May 26, 1989 issued by the Securities and Exchange Commission (SEC) in SEC Case No. 2250 granting the respondents' motion for the issuance of a break-open Order for the purpose of implementing the Certificate of Sale of November 23, 1987 in NLRC Case No. 9-3296-84 covering certain PBM properties, located at the PBM Compound in Balintawak, Quezon City which were earlier sold at a public auction sale on the ground that the same properties already belonged to the petitioner before the auction sale.

In G. R. No. 96056, the petitioner questions the decision of the Court of Appeals which affirmed the earlier decision of the Regional Trial Court (RTC) of Makati, Branch 60 validating the auction sale of some PBM properties by respondent deputy sheriff Silvino Santos of the Department of Labor and Employment (DOLE) on the ground that the same properties already belonged to the government before the auction sale.

In G. R. No. 96437, the petitioner questions the decision and resolution of the Court of Appeals which also affirmed an earlier order of the Regional Trial Court of Pasig, Metro Manila, Branch 151. The Pasig RTC denied the petitioner's motion to dismiss a complaint (with application for a writ of preliminary attachment) seeking compliance with the provision of a deed of sale, the subject matter of which are some properties of the PBM bought by respondent Alfredo E. Asibar (also a respondent in G. R. No. 96056) as highest bidder in an auction sale executed between Asibar as vendor and petitioner Phoenix Iron and Steel Corporation (Piscor) as vendee on the ground that the complaint states no cause of action.

In 1981, the PBM stopped operations due to business losses and financial reverses. On April 1, 1982, the PBM filed with the SEC a petition seeking for a declaration of a state of suspension of payments. On April 6, 1982, the SEC assumed jurisdiction over the petition. On July 9, 1982, the SEC placed the PBM under rehabilitation receivership and appointed rehabilitation receivers. The employees of PBM then filed a complaint for illegal dismissal with money claims against PBM with the National Labor Relations Commission (NLRC). Those who filed belonged to the rank-and-file and managerial/technical employees identified and categorized by groups. Common claims of the employees were unpaid benefits under Wage Order No. 1, 15th month-pay, money value of unearned vacation and sick leaves and holiday pay. The case was docketed as NCR Case No. 3-1250-83.

On December 28, 1983, Labor Arbiter Bienvenido Hermogenes rendered a decision in favor of the employees. The employees were granted monetary benefits including separation pay.

On appeal, the Labor Arbiter's decision was modified by the NLRC, to wit:

"WHEREFORE, except for the modification dismissing the claim for separation pay for lack of merit, the Decision appealed from is hereby AFFIRMED in all other respects. The injunction issued on 15 November 1984 is lifted." (Rollo - G. R. No. 79202, p. 18)

In G. R. No. 79202, we affirmed the NLRC decision in a resolution dated November 18, 1987. Thus, we dismissed the petition for certiorari filed by the employees questioning the deletion of the award of separation pay resulting from serious losses by PBM.

In the meantime, the employees of PBM numbering 2,081 filed another complaint for illegal dismissal and money claims with the NLRC. The case was docketed as NCR Case No. 9-3296-84.

On May 28, 1987, Labor Arbiter Bienvenido V. Hermogenes rendered a decision in favor of the employees including separation pay.

On appeal, the Labor Arbiter's decision was affirmed by the NLRC in a decision dated November 9, 1987. The NLRC ordered the remand of the records to the Labor Arbiter for the issuance of a writ of execution.

On November 13, 1987, the Labor Arbiter issued a writ of execution.

On November 17, 1987, Deputy Sheriff Silvino Santos of the NLRC issued a "Notice of Levy and Sale of Personal Properties On Execution" and scheduled a public auction of PBM properties to the highest bidder for cash on November 23, 1987.

On November 19, 1987, PBM filed with us a petition to review the decision of the NLRC on the ground that the November 9, 1987 decision did not take into account the fact that as found by this Court in G. R. No. 71318 the NLRC had already denied claims for separation pay of the employees. In addition, the petitioner prayed for the issuance of a temporary restraining order enjoining the scheduled sale of the properties. The petition was docketed as G. R. No. 80580.

In a resolution dated December 1, 1987, G. R. Nos. 79202 and 80580 were consolidated.

On May 2, 1988, we issued a resolution in the consolidated petitions, to wit:

"On November 18, 1987, the Court issued a resolution dismissing the petition in G. R. No. 79202 for lack of merit. A motion for reconsideration was denied with finality on January 27, 1988. This Court has stated that in various and more appropriate cases involving consortiums of banks trying to recover even only a percentage of the loans extended to Philippine Blooming Mills (PBM), it was determined that PBM not only incurred serious losses but was in desperate straits leading to its collapse. This is a finding which remains beyond serious dispute and it is pointless for the petitioners to keep on reiterating the same arguments on this issue in any motion for reconsideration in this or other petitions.

Any claims of laborers, including those enjoying preference over other credits, will have to be submitted in the course of the bankruptcy, liquidation or rehabilitation proceedings.

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In G. R. No. 80580, the Solicitor General has taken sides with the petitioner and adopted the petitioner's reply to the private respondents' comment. No explanation is given and no substantial distinctions are cited to explain why the National Labor Relations Commission should take an action in G. R. No. 80580 which is

different from and conflicts with its stand in G. R. No. 79202. This being the case, the Court reiterates its ruling in G. R. No. 79202.

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Considering the foregoing, the COURT RESOLVED to SET ASIDE the decision of the National Labor Relations Commission dated November 9, 1987 in G. R. No. 80580 and to permanently enjoin the sale of properties in NLRC Case No. NCR-9-3296-84 until after the Securities and Exchange Commission in SEC Case No. 2250 has determined the procedures for settling the many claims, including the money claims for workers and employees, against the Philippine Blooming Mills Co. Inc." (Rollo - G. R. No. 80580, pp. 309-310)

The petitioners filed separate motions for clarification of the resolution as regards the portion that permanently enjoins the sale of properties of PBM until after the SEC has determined the procedures for settling the various money claims against PBM.

It turned out that during the pendency of G. R. No. 80580, deputy sheriff Silvino Santos pushed through with the scheduled auction sale of PBM properties on November 23, 1987 in NCR Case No. 9-3296-84 as a result of which a certificate of sale dated November 23, 1987 was issued in favor of the highest bidder, Alfredo Asibar, the respondent in G. R. Nos. 96056 and 96437. We did not issue the prayed for temporary restraining order to enjoin the scheduled auction sale on November 23, 1987.

On November 21, 1988, we issued a resolution, the pertinent portion of which reads:

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"The respondents claim that the injunction should not cover properties already sold before May 2, 1988 or more particularly the certificate of sale of November 23, 1987. On the other hand, the petitioner states that the sale of properties in G. R. No. 71318 is not the same as the sale of properties in the instant case.

The issues raised by the respondents call for ascertainment of facts. This Court is not a trier of facts. The question of exactly what properties may no longer be included in the liquidation proceedings but should be given to the workers pursuant to the decision of the National Labor Relations Commission is, therefore, referred to the Securities and Exchange Commission which is directed to hold hearings on the matter. This petition has been decided. A motion for reconsideration has been denied with finality. Entry of judgment has been effected. No further motions of the same nature as the one before the Court will be entertained.

CONSIDERING THE FOREGOING, THE COURT RESOLVED to REFER the respondents' motion for clarification to the Securities and Exchange Commission for resolution. Counsel of the parties are warned to follow regular procedures regarding their respective claims and not indiscriminately pass on to this Court questions which call for determination or action by other agencies or Tribunals." (Rollo - G. R. No. 96056, pp. 345-346, Emphasis supplied)

II

G. R. No. 89767

On July 20, 1983, the petitioner filed with the Regional Trial Court of Pasig a complaint for foreclosure of mortgage with receivership against PBM, Four Seas Trading Corporation (Four Seas) and Alfredo Ching. The case was docketed as C. C. No. 49997.

On August 29, 1986, the court rendered a partial summary judgment, the dispositive portion of which reads:

"WHEREFORE, premises considered, this Court hereby resolves to GRANT plaintiff SIHI's Motion for Partial

Summary Judgment dated January 15, 1986 and hereby orders defendants Philippine Blooming Mills Co., Inc. and Alfredo Ching to pay plaintiff State Investment House, Inc. jointly and severally their unpaid obligations in the undisputed amount of P53,000,000.00 plus the stipulated attorney's fees in the amount equivalent to 25% thereof, as well as the costs of suit; and in the event the said defendants are unable to satisfy said judgment within the period prescribed by law, this Court hereby orders plaintiff State Investment House, Inc., as the court-appointed receiver, to apply the proceeds of the Receiver's sale of the mortgaged steel inventories, including any earnings thereon, if any, in partial satisfaction of said judgment and the Branch Sheriff of this Court is likewise ordered to sell at public auction the real properties mortgages (Annexes "E", "E-1" to "E-9" and "F" and "F-1", Complaint) and that the proceeds thereof be applied in satisfaction of said judgment and costs of suit, accordingly." (Rollo, p. 5)

On October 5, 1987, the court issued an Order granting the petitioner's Motion to Order Sale of Mortgaged Real Properties. Accordingly, Deputy Sheriff Mario J. Tamang sold at public auction said mortgaged properties belonging to PBM and Four Seas. The highest bidder was the petitioner as evidenced by two (2) separate certificates of sale executed by the sheriff in its favor on November 9, and 10, 1987, respectively.

In response to the notice of levy and sale of personal properties on execution issued by Deputy Sheriff Silvino Santos in connection with the writ of execution in NCR Case No. 9-3296-84, setting for sale at public auction, among others, some properties of PBM located at PBM Compound Balintawak, Quezon City, the petitioner filed in Civil Case No. 49997 a motion for issuance of a writ of preliminary injunction to restrain Silvino Santos from selling at public auction the said properties. The petitioner contended that the said properties are among the mortgaged properties of Four Seas which were sold to the petitioner on November 9 and 10, 1987.

On November 20, 1987, the court issued an Order temporarily enjoining Silvino Santos from selling at public auction the questioned properties. Despite this temporary restraining order, Silvino Santos proceeded with the auction sale prompting the petitioner to file a motion to cite the sheriff guilty of contempt of court and declaring null and void the certificate of sale executed by him covering the properties located at PBM compound in Balintawak, Quezon City. The lower court granted the motion.

Silvino Santos tried unsuccessfully to have the contempt order set aside in both the Court of Appeals and this Court. The case docketed as G.R. No. 85242 will be discussed later. Suffice it to say at this point that the Court dismissed the petition for certiorari questioning the affirmance by the Court of Appeals of the contempt Order issued by the Regional Trial Court of Pasig.

As a result of our Resolution dated November 21, 1988 issued in G.R. Nos. 79202 and 80580 the private respondents filed an urgent motion with the SEC in SEC Case No. 2250 seeking clarification on the question of the scope of injunction referred to said agency by the Court.

On February 9, 1989, the SEC issued an Order ruling that the said injunction "does not cover properties already sold before May 2, 1988 or more particularly, the certificate of sale on November 23, 1987 in NLRC Case No. NCR-9-3296-84" (p. 100, Rollo, G.R. No. 89767)

On May 26, 1989, the SEC issued another Order granting the private respondent's motion for the issuance of a break-open Order, the dispositive portion of which reads:

"WHEREFORE, the Urgent Motion For The Issuance of a Break-Open Order dated April 12, 1989 should be, as it is hereby GRANTED, for the purpose of implementing and carrying into effect the Certificate of Sale of November 23, 1987 in NLRC Case No. 9-3296-84 involving the properties subject-matter of such sale located at the PBM Compound in Balintawak, Quezon City, and Manggahan, Pasig, Metro Manila" (Rollo, p. 11)

The petitioner questioned the SEC Order by filing a petition for certiorari with the Court of Appeals.

In a decision dated June 29, 1989, the appellate court denied due course and dismissed the petition. A motion for reconsideration was denied.

Hence, this petition.

G. R. NO. 96056

One of the creditors of PBM was the Philippine National Bank (PNB). When PBM failed to pay its obligations secured by mortgages, PNB extrajudicially foreclosed the real estate mortgages executed in its favor. Thus, on November 2, 1983, the mortgaged properties - a) seven [7] registered lots in Rosario, Pasig, Metro Manila, and b) seven [7] buildings and machineries and equipment, were publicly auctioned by the Sheriff and sold to PNB. The lots were sold for P21,930,000.00 (Exhibits B, B-1, and B-2), the buildings for P4,192,250.00 (Exhibits C and C-1), and the machineries and equipment (Exhibits A to A-17), inclusive - for P76,720,800.00 (Exhibit A).

In accordance with Administrative Order No. 14 implementing Proclamation No. 50 of the President dated December 8, 1986 (Exhibit F-1-B), PNB transferred to the national government through the Asset Privatization Trust (APT) the assets acquired from PBM as evidenced by the deed of transfer dated June 5, 1987.

The APT in turn sold machineries and equipment for P45,000,000.00 to Phoenix Iron and Steel Corporation and the others for P65 million to Killer Realty.

When respondent sheriff Silvino Santos issued the notice of levy and sale of the personal properties of PBM, and scheduled the public auction sale on November 23, 1987 in NCR Case No. 9-3296-84, the PNB filed with the NLRC a "NOTICE OF THIRD PARTY CLAIM" on November 20, 1987 (Exhibit F-3).

As stated earlier, deputy sheriff Santos proceeded with the scheduled auction sale on November 23, 1987. The highest bidder was respondent Asibar. His bid was P5,950,000.00. On the same day, Santos issued the corresponding Certificate of Sale in favor of Asibar.

On November 24, 1987, Labor Arbiter Hermogenes issued a "break open" order, ordering the "Sheriff assigned in the case and his assistance" (sic) to gain access to the place (PBM Compound). Between November 24 and November 28, 1987, some persons hauled and carried away personal properties from the compound. The guards listed the properties and the lists were given to the guards' supervisor. (Rollo - G. R. No. 96056, p. 31)

On November 27, 1987, the national government through APT filed an action for damages with preliminary injunction and/or temporary restraining order against Labor Arbiter Hermogenes, Deputy Sheriff Silvino Santos, Asibar and all the complainants in NCR Case No. 9-3296--84 with the Regional Trial Court of Makati, Metro Manila. The case was raffled to Branch 60 and was docketed as Civil Case No. 18426.

After due trial, the trial court on December 29, 1989 rendered a decision dismissing the complaint, to wit:

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"WHEREFORE, the Court hereby renders judgment as follows:

The complaint dated November 25, 1987 is DISMISSED;

The Order dated December 16, 1987 (pp. 87-90, Records) as clarified in the Order dated July 19, 1988 granting the plaintiffs' application for a writ of preliminary injunction (pp. 288-289, Id.) is LIFTED and SET ASIDE; and

The COUNTERCLAIMS of the defendants (other than SILVINO SANTOS and BIENVENIDO HERMOGENES) are DISMISSED." (Rollo, p. 42)

A motion for reconsideration filed by the petitioner APT was denied.

Petitioner APT then filed a petition for certiorari and prohibition with the Court of Appeals. The appellate court, however, dismissed the petition.

Hence, the instant petition.

On November 29, 1990, we issued a temporary restraining order enjoining respondent Asibar from taking the machineries, engines, and equipment (foreclosed chattels of the Philippine Blooming Mills, Co., Inc.) which were transferred and assigned by the Philippine National Bank in favor of the National Government as well as those already sold by the National Government to Phoenix Iron and Steel Corporation.

On January 10, 1991 Phoenix Iron and Steel Corporation and the Rehabilitation Receivers of PBM filed a motion for intervention alleging that its intervention is imperative because its possession of the chattels sold to it by the National Government and which are being used in the rehabilitation of PBM are being threatened to be taken by the private respondent. We granted the motion in a Resolution dated January 24, 1991.

The petition was given due course in the Resolution dated April 16, 1991.

In another Resolution dated November 26, 1991, we granted the intervenors' motion for leave to submit Additional Comment And/Or Argument.

G. R. NO. 96437

On February 10, 1988, a Deed of Sale was executed between respondent Alfredo Asibar as vendor and petitioner Phoenix Iron and Steel Corporation (co-petitioner Wilfredo Labayen is the vice-president of the corporation) as vendee involving machineries and equipment inside all the buildings at PBM compound in Manggahan, Pasig, Metro Manila. These properties were among the properties bought by Alfredo Asibar in the auction sale conducted by Deputy Sheriff Silvino Santos on November 23, 1987.

On December 26, 1988, respondent Asibar filed with the Regional Trial Court of Pasig, Metro Manila, Branch 151, a complaint with application for a writ of preliminary attachment, seeking the payment by the petitioners, jointly and severally of the amount of P8.5 million which he alleged was the balance already due at the time based on the terms of the contract, including penalty for late payment, moral, exemplary damages, litigation expenses, attorney's fees and costs of suit. The case was docketed as Civil Case No. 56806. On February 10, 1989, the petitioner filed a motion to dismiss on the ground that the complaint fails to state a cause of action.

On May 10, 1989, the trial court issued an order denying the motion. The petitioners were given ten (10) days from receipt within which to file their answers to the complaint.

The petitioners then filed with the Court of Appeals a petition for certiorari with prayer for the issuance of a writ of preliminary injunction questioning the May 10, 1989 order.

The Court of Appeals, however, dismissed the petition and ordered the return or remand of the records to the trial court for trial of the case on the merits.

A motion for reconsideration filed by the petitioners was denied. Hence, the instant petition.

On January 28, 1991, we issued a temporary restraining order enjoining the Regional Trial Court of Pasig, Metro Manila, Branch 151, from further proceeding with Civil Case No. 56806.

III

In G.R. No. 89767, the petitioner contends that:

"a) By upholding the questioned Order of respondent SEC of 26 May 1989, the respondent Court of Appeals has in effect reversed the ruling of this Honorable Court in G.R. No. 85242.

b) By allowing respondent SEC to seize from petitioner SIHI the properties in dispute for the purpose of satisfying the money judgment obtained by the laborers of PBM despite the adverse claim of petitioner SIHI over the said properties, the respondent Court of Appeals has completely disregard the right of petitioner SIHI to due process of law.

c) By permitting respondent SEC to execute the money judgment obtained against PBM by its laborers pending liquidation of PBM, the respondent Court of Appeals has in effect granted the PBM- Laborers undue preference contrary to the ruling of this Honorable Court." (Rollo, p. 16)

In G. R. NO. 96056, the petitioner raises the following issues:

I. WHETHER OR NOT THE CA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT FINDING THAT THE AUCTION SALE CONDUCTED BY SANTOS IS VOID.

III. WHETHER OR NOT THE CA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN NOT FINDING THAT THE PROPERTIES SOLD TO ASIBAR ARE THE SAME AS THOSE FORECLOSED BY PNB AND NOW BELONGING TO THE NATIONAL GOVERNMENT. (Rollo - G. R. No. 96056, p. 9)

These petitions are discussed jointly as the issues raised are interrelated.

In response to our directive in the November 21, 1988 resolution in G.R. No. 80580 which referred the respondents' motion for clarification as to whether or not the certificate of sale of November 23, 1987 is included in the order of permanent injunction to sell PBM properties in NLRC Case No. NCR-9-3296-84 until after the SEC in SEC Case No. 2250 (PBM liquidation proceedings) has determined the procedures for settling all the money claims against PBM ordered in the resolution dated December 2, 1987 in G. R. Nos. 79202 and 80580, the SEC issued an order dated February 9, 1989 in SEC Case No. 2250, to wit:

"Acting upon the Urgent Motion To Resolve Clarification dated August 22, 1988 in G. R. No. 80580 which the Supreme Court referred to this Honorable Commission For Resolution, as per Order of the Supreme Court in its Resolution in G. R. No. 80580 dated November 21, 1988, filed by the counsel for the 2,081 laborers of PBM in NLRC Case No. NCR 9-3296--84, and considering the Manifestation dated February 2, 1989, filed by the petitioner and the rehabilitation receiver in the above-entitled case, the Hearing Panel hereby rules that the injunction issued therein, does not cover properties already sold before May 2, 1988 or more particularly the certificate of sale on November 23, 1987 in NLRC Case No. NCR-9-3296-84." (Rollo - G. R. No. 85242, p. 330; Emphasis supplied)

Another order dated May 26, 1989, was issued in SEC Case No. 2250 involving PBM properties claimed by the State Investment House, Inc. wherein the SEC reiterated its February 9, 1989 clarificatory order regarding the certificate of sale dated November 23, 1987. This order was the subject matter in CA-G. R. SP No. 17698. The Court of Appeals affirmed the order prompting SIHI to challenge the appellate court's decision by filing a petition for certiorari with this Court. The case is docketed as G. R. No. 89767.

In G. R. No. 96056, the appellate court is of the view that the February 9, 1989 order of the SEC clarified the issue as to what properties are excluded from the liquidation proceedings but which should be given to the

workers pursuant to the decision of the NLRC in Case No. NCR 9-3296-84 by ruling that "the hearing Panel hereby rules that the injunction issued therein does not cover properties already sold before May 2, 1988 more particularly the certificate of sale in November 23, 1987 in NLRC Case No. NCR 9-3296-84" (Rollo - G. R. No. 96056, p. 25) With this finding, the appellate court, among others, dismissed the petition.

In this regard, we take note of another case (G. R. No. 85242 entitled *Sheriff Silvino Santos, et al. v. Court of Appeals, et al.*). In this petition, SIHI filed an action before the Regional Trial Court of Pasig, Metro Manila, Branch 168 presided by Judge Benjamin Pelayo, to enjoin the implementation of a writ of execution issued in NLRC Case NCR No. 9-3296-84. Specifically, SIHI asked the court to enjoin Deputy Sheriff Silvino Santos from selling at the public auction sale on November 23, 1987 PBM properties which were allegedly owned by SIHI.

On November 20, 1987, Judge Pelayo issued an order, enjoining Sheriff Santos to desist from selling the properties being claimed by SIHI.

Sheriff Santos, however, ignored the order and went ahead with the November 23, 1987 auction sale. Judge Pelayo, then issued another order dated February 22, 1988 nullifying the sale and finding Sheriff Santos guilty of contempt.

Sheriff Santos then filed a petition for certiorari and prohibition with preliminary injunction with the Court of Appeals alleging that Judge Pelayo committed grave abuse of discretion and lack of jurisdiction in blocking the NLRC's writ of execution. The petition was dismissed.

Ricardo Zurita and 2,080 other laborers (complainants in NLRC Case NO. 9-3296-84) in whose favor the writ of execution was issued by the NLRC filed with the Court a motion for leave to intervene as co-petitioners.

In a resolution dated March 15, 1989, we denied the petition for lack of merit. We stated:

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"Insofar as the money claims of the co-petitioners-intervenors are concerned, the law on the case is that announced in G. R. No. 71318, *Philippine Blooming Mills Co., Inc. v. National Labor Relations Commission, et al.*, January 20, 1986, where this Court ruled:

“Considering all the foregoing, the Court Resolved to DISMISS the petition insofar as it seeks to nullify the decision of the National Labor Relations Commission on benefits due the respondent laborers and to restrain the disposition of properties in the satisfaction of the various obligations of the petitioner. However, the awards made by the Commission shall be referred to the Securities and Exchange Commission to determine the preference or priority under the law in the settlement of all claims. The restraining order dated July 22, 1985 which reads in part:

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‘ENJOINING the respondents from enforcing the alias writ of execution and the sale of the properties of petitioner, and if already enforced, from turning over to the private respondents the proceeds of the auction sale in NLRC Case No. 3-1250-83, entitled *Pedro Ablaza, et al., Complainants, v. Philippine Blooming Mills Company, Inc., Respondent*’ of the National Labor Relations Commission, Ministry of Labor and Employment.’

is clarified as not covering the certificate of sale issued on July 19, 1985. However, all proceeds of that sale and earlier sales must be turned over to the Securities and Exchange Commission to be distributed according to law. This Court's temporary restraining order shall be lifted and set aside once the Securities and Exchange Commission has taken over the control of funds and assets as above indicated.'

Any execution of the NLRC decision awarding benefits to the PBM workers and any disposition of PBM properties arising from the NLRC awards must be referred to the Securities and Exchange Commission pursuant to the above resolution.

Any attempt to execute on properties not belonging to PBM is properly a concern of civil courts and not of the NLRC. Either way, the action of the petitioner sheriff is premature or improper." (Rollo - G. R. No. 85242, pp. 271-272; Underlining supplied)

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The petitioner sheriff filed a motion for reconsideration. The movant-intervenors also filed a separate motion for reconsideration with clarification. The movant-intervenors specifically mentioned the February 9, 1989 order of the SEC in SEC Case No. 2250 clarifying the issue as to whether or not the certificate of sale dated November 23, 1987 in NLRC Case NCR No. 9-3296-84 is included in the permanent injunction of the sale of PBM properties under the resolution dated November 21, 1988 in G. R. No. 80580. The movant-intervenors contended:

"It is an admitted fact that the properties subject of this controversy are included in the certificate of sale of November 23, 1987 and not by another execution which, this Honorable Court might misunderstand, and which the same was already clarified by this Honorable Court through its delegated authority, the Honorable Securities and Exchange Commission. It is very apparent and very important then, that in so far as the certificate of sale of November 23, 1987 is concerned, (which includes subject properties in controversy) be finally laid to rest as this Honorable Court said in that particular resolution x x x." (Rollo - G.R. No. 85242, p. 306)

We denied the motions. We said in our resolution dated April 5, 1989:

"The motion for reconsideration cites the Court's resolution dated March 15, 1989 out of context. The movant-intervenors play up paragraph 2, page 3 of the resolution but ignore the first paragraph on the same page which is more important.

The resolution of this Court rules that if, as the petitioners and the movant-intervenors insist, the disputed properties really belong to the Philippine Blooming Mills, then the execution must be referred to the Securities and Exchange Commission pursuant to the earlier resolution of this Court. On the other hand, if the properties belong to persons other than the Philippine Blooming Mills, the National Labor Relations Commission has no jurisdiction because the matter fall within the jurisdiction of the civil courts.

Therefore, if the movant-intervenors are correct and the disputed properties belong to the Philippine Blooming Mills, their action is premature and must await a determination by the Securities and Exchange Commission pursuant to the earlier resolutions in the Philippine Blooming Mills cases. Once the SEC has decided the cases, the execution shall issue from it and not from the NLRC.

The Court further reiterates its resolution in G. R. No. 80580 and G. R. No. 79202 that the claims of the Philippine Blooming Mills' laborers are not denied. The Court simply rules that all valid claims including those of the laborers must be submitted in the course of bankruptcy, liquidation and rehabilitation proceedings. This is a function of the Securities and Exchange Commission for appropriate action." (Rollo - G. R. No. 85242, p. 335; Emphasis supplied)

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From the different resolutions in all the cases involving PBM properties in relation to SEC Case No. 2250 (liquidation proceedings of PBM) we reiterate the following: 1) all PBM properties including the proceeds of the various sales undertaken by the NLRC to implement its final decision in NCR 9-3296-84 should be turned over to the SEC for disposition according to law, and 2) for purposes of executing the NLRC final decision awarding

monetary benefits to the former workers of PBM, the NLRC has no jurisdiction over properties belonging to persons other than PBM.

As far as the Sheriff's sale dated November 23, 1987 is concerned, the SEC issued the Order dated February 9, 1989, pursuant to our directive in our resolution of November 21, 1988 clarifying that the injunction against the sale of PBM properties does not include the November 23, 1987 certificate of sale. However, it does not necessarily follow from the auction sale of PBM properties conducted by Sheriff Santos resulting in the issuance of the certificate of sale dated November 23, 1987 in favor of the highest bidder, respondent Asibar, that all properties sold therein fall within the clarificatory order of the Securities and Exchange Commission (SEC). A distinction as to the ownership of these properties must be made. Thus, if some properties were sold which belonged to other persons over whom the NLRC does not have jurisdiction, necessarily, such properties must be considered not to fall within the February 9, 1989 order of the SEC. These should be returned to their rightful owners.

Under these circumstances, the pivotal issue to be resolved hinges on whether or not the disputed properties sold by Sheriff Santos belong to petitioner SIHI in G. R. No. 89767 and APT in G. R. No. 96056.

In G. R. No. 89767, the questioned Order dated May 26, 1989 of the SEC which was affirmed by the Court of Appeals states:

"We found the grounds invoked by SIHI in its comment untenable and without merit. Firstly, the urgent motion for a break-open order is but an implementation of our final order of February 9, 1989 wherein it clearly states that 'the injunction issued therein, does not cover properties already sold before May 2, 1988 or more particularly the certificate of sale on November 23, 1987 in NLRC Case No. NCR-9-3296-84'; secondly, this Commission is legally authorized and duly empowered by the Supreme Court pursuant to its Resolutions dated November 21, 1988 (G.R. No. 80580 and 79202) and April 5, 1989 (G.R. No. 86242) to determine the valid claims of subject laborers in all these cases; and thirdly, it is the function of this Commission to implement the Certificate of Sale on November 23, 1987 in NLRC Case No. NCR-9-3296-84 for the reason above-stated and to issue forthwith any writ of execution, if necessary, to fully satisfy the valid claims of these complainants-laborers, as clearly mandated in the aforestated Resolution of the Supreme Court." (Emphasis supplied, Rollo, p. 32)

In affirming the Order, the appellate court said:

"The SEC issued the 'Break-Open Order' contained in the Order now being assailed for the purpose of implementing and carrying into effect the certificate of sale of properties involved in NLRC Case No. 0-3296-84 wherein the claims against PBM of private respondents -- the 2,081 complainants former PBM laborers -- were resolved. The authority of the SEC to act on this particular matter emanates from the Supreme Court Resolutions of November 21, 1988, March 15, 1989 and April 5, 1989. The first above-named Resolution was issued by the Supreme Court upon private respondents' motion for clarification of the scope of the injunction which the Court issued to stop the enforcement of the writ of execution already mentioned, which had been issued by the NLRC, against properties foreclosed by PBM creditors. In very certain terms, the Supreme Court in said Order states that it 'cannot supervise the liquidation of PBM assets and declare what portion goes to laborers, what portion goes to creditor banks, etc.' and that this is a function of the SEC; referred to the SEC the question of exactly what properties should be given to the workers pursuant to the decision of the NLRC; and directed the SEC 'to hold hearings on the matter'. The other two Resolutions (of March 15, 1989 and April 5, 1989) were issued by the Supreme Court precisely on the petition for review of the order of the RTC of Pasig in C.C. No. 49997, inter alia declaring null and void the certificate of sale executed by the NLRC Deputy sheriff covering the properties located at the PBM compound in Balintawak, Quezon City. In the March 15, 1989 order, the Supreme Court categorically stated that 'any execution of the NLRC decision awarding benefits to the PBM workers and any disposition of PBM properties arising from the

NLRC awards must be referred to the Securities and Exchange Commission.' And in reiteration of said pronouncement, the Supreme Court in the April 5, 1989 Order, explicitly 'REFERRED' the matter to the SEC 'for appropriate action' after stating that all valid claims against PBM including those of the laborers 'must be submitted' in the course of the bankruptcy, liquidation and rehabilitation proceedings' which 'is a function of the Securities and Exchange Commission.' (Rollo, pp. 33-34)

Obviously, the SEC's May 26, 1989 Order has for its basis, the certificate of sale covering the Balintawak properties of PBM issued by Sheriff Silvino Santos as a result of the auction sale Santos held on November 23, 1989 pursuant to the writ of execution issued by the NLRC in NCR Case No. 9-3296-84. It is to be noted, however, that the certificate of sale issued to the highest bidder on the Balintawak properties of PBM was declared null and void in Civil Case No. 49997 and such declaration was affirmed by us in G.R. No. 85242.

Under these circumstances, the SEC had no authority to order the implementation of a certificate of sale which was earlier declared null and void. True, the SEC pursuant to our Resolutions in the other related PBM cases has jurisdiction over all properties of the PBM which should be distributed among valid claimants including the private respondents in the liquidation proceedings. Such jurisdiction, however, does not include the power to reverse and set aside our own resolutions. It cannot issue a "break-open order" arbitrarily and to the prejudice of third persons seize PBM properties which were earlier in the lawful possession of third persons.

In the instant case, the Balintawak properties of PBM covered by the certificate of sale were earlier sold to the petitioner in an auction sale involving the said properties. Thus, in Civil Case No. 49997, the trial court issued an Order dated May 3, 1988, the pertinent portion of which reads:

"In the light of the foregoing facts, the pertinent question is whether plaintiff, as purchaser at the auction sale of the aforementioned mortgaged properties, acquired valid titles not only to the land, subject of the mortgage of defendant Four Seas Trading Corporation, but also to all the buildings, improvements and machineries existing thereon. The answer to this question is determinative of the question of whether this court had the jurisdiction to issue the restraining order, and subsequently the writ of preliminary injunction, under consideration whereby this court enjoined Sheriff Santos from proceeding with the execution sale of the buildings, machineries and equipment located on the land of defendant Four Seas Trading Corporation in satisfaction of the judgment rendered against defendant Philippine Blooming Mills Co., Inc. in NLRC Case No. NCR-9-3296-84.

It is an admitted fact that the land, on which the buildings, machineries and equipment in question are located, are registered land in the name of defendant Four Seas Trading Corporation. It is also an admitted fact that no reservation of title in the name of defendant Philippine Blooming Mills Co., Inc. is noted in the certificates of title of defendant Four Seas Trading Corporation with respect to the buildings, machineries and equipment existing on the land covered by the said titles.

Such being the case, this court finds no cogent reason to disturb its findings contained in its Order, dated December 10, 1987, ordering the issuance of a writ of preliminary injunction against Sheriff Santos. For under the law and existing jurisprudence, plaintiff, as an innocent mortgagee and purchaser for value, acquires good and valid titles to the properties in question.

As long as this decision is not set aside or modified in proper legal proceedings, the SEC has no jurisdiction over the Balintawak properties, much less, to issue a break-open Order to implement a voided certificate of sale covering the said properties.

"The trial court has the competence to identify and to secure properties and interests therein held by the judgment debtor for the satisfaction of a money judgment rendered against him. (Section 15, Rule 39, Revised Rules of Court). The exercise of its authority is premised on one important factor: that the properties levied upon, or sought to be levied upon, are properties unquestionably owned by the judgment debtor and are not

exempt by law from execution. For the power of the Court in the execution of its judgment extends only over properties belonging to the judgment debtor. (See *Reyes v. Grey*, 21 Phil. 73 [1911], *Misut v. West Coast San Francisco Life Insurance Co.*, 41, Phil. 258. [1920], *Herald Publishing Co. v. Ramos*, 88 Phil. 94 [1951]; and *Bayer Philippines, Inc. v. Agana*, 63 SCRA 355 [1975]; *Consolidated Bank and Trust Corp v. Court of Appeals*, 193 SCRA 158 [1991])

In G. R. No. 96056 the petitioner contends that the appellate court committed grave abuse of discretion amounting to lack of jurisdiction in dismissing its petition for certiorari accusing the trial court of grave abuse of discretion in ruling that there is no identity between the PBM properties sold to the petitioner's predecessor PNB in 1983 and the PBM properties sold to respondent Asibar in the auction sale of November 23, 1987 on the ground that the appellate court did not consider the petitioner's allegations and evidence.

Petitioner APT contends that what took place was a simulated auction sale of properties already owned by PNB and transferred to the APT and that the Sheriff sold for P5,950,000.00 properties for which PNB had bid P76,720,800.00.

The petitioner claims that the Certificate of Sale (Exhibit "A", Annex "C", Petition) issued in favor of PNB shows that the chattels which were sold later by Sheriff Santos to Asibar in the questioned auction sale are housed at the following: (1) Oxygen Plant No. 2; (2) Carpentry Shop; (3) Electrical Shop and Instrumentation Building; (4) Machine Shop; (5) Scale house; (6) Wire Drawing Plant; (7) Nail Plant; (8) Bolt and Nut Making Plant; (9) Motorpool and Rebuilding Section; (10) Repair and Shifting Maintenance Section; (11) General Utility and Fire Section; (12) Oxygen Plant No. 1; (13) Topy Mill (Rolling Mill #1); (14) Rolling Mill No. 2; (15) Rolling Mill No. 3; (16) Wire Rod Mill; (17) Open Hearth Furnace; (18) and those at Building Nos. 24, 25, 26, 28, 31, and 33 (Electric Arc Furnace), 34, 35 and 37 (Bailing Press Machine Building, Press Machine Building, Scale House No. 2 and Pump House No. 2). According to the petitioner, all the buildings, plants, shops, sections, and mills acquired in 1983 are located at the PBM Compound, Pasig, Metro Manila. All these chattels were transferred, assigned and conveyed by PNB in favor of the national government thru the Deed of Transfer dated February 27, 1987.

The petitioner claims that the Certificate of Sale issued to Asibar by Sheriff Santos conclusively shows that chattels inside nine (9) buildings which PNB bought, namely: Oxygen Plant No. 2, Carpentry Shop, Electrical Shop and Instrumentation Building, Machine Shop, Scale House, Wire Drawing Plant, Nail Plant, Bolt and Nut Making Plant, Motorpool and Rebuilding Section, Repair and Shifting Maintenance Section, General Utility and Fire Section, Oxygen Plant No. 1, Topy Mill (Rolling, Mill No. 1), Rolling Mill No. 2, Rolling Mill No. 3, Wire Rod Mill, Open Hearth Furnace, and Bailing Press Machine Building all located at PBM compound, Manggahan, Pasig, Metro Manila were also sold to Asibar by Sheriff Santos.

It is to be noted that the appellate court's decision has no specific findings of facts regarding the issue as to whether or not the properties sold to Asibar are different from the properties previously sold to the PNB. Instead, the decision in a sweeping statement stated that the lower court did not commit grave abuse of discretion as the trial court's findings are duly supported by substantial evidence.

The lower court said:

"PROPERTIES

SOLD to PNB

13. The plaintiff does not question in this case the auction sale of PBM's properties in Balintawak, Quezon City to ASIBAR. What it questions only is the auction sale of PBM's properties located in its Compound in

Manggahan, Pasig. It is therefore necessary to determine what are the properties sold to PNB per the certificates of sales (Exhs. A to A-147 inclusive; and Exhs. C and C01) and the properties of PBM at its Manggahan, Pasig, Compound sold to Asibar per the certificate of sale (Exhs. H, G-1 to E-4 or Exhs. 1, 1-A to 1-E-Asibar).

14. The properties which PNB bought are:

14.1. The machineries and equipments in sixteen (16) Buildings - Building Nos. 6 (Exhs. A-20 to A-32); 10 (Exh. A-32), 12 (Exhs. A-33 to A-43), 13 (Exhs. A-6; Exhs. A--43 to A-59), 16 (A-43 to A-59), 21 (Exhs. A-59 to A-85), 22 (Exhs. A-86 to A-108), 24 (Exhs. A-108 to A-112), 25 (Exhs. A-109 to A-112), 26 (Exhs. A-112-A to A-114), 28 (Exh. A-114) 13 (Exhs. A-114 and A-115), 33 (Exhs. A-125 to A-133); A-138 to A-140), 34 (Exhs. A-132 and A-133), 35 (Exhs. A-140 to A-147) and 37 (Exhs. A-134 to A-138) per Exhs. A, A-1 to A--147.

14.2. Four (4) buildings (sic) erected on the lots covered by TCT Nos. 43445, 853, 30196 and 32897, Registry of Deeds of Rizal, namely: (a) a CANTEEN 2-storey semi-concrete; (b) one-storey electrical shop; (c) OPEN WAREHOUSE and carpentry shop; and (d) scale house (wood and masonry) per Exhs. C and C-1.

PROPERTIES SOLD

TO ASIBAR

15. On the other hand, Asibar bought the following properties per Exhs. 1 to 1-E-Asibar or Exhs. H to H-4;

15.1. Thirty four (34) buildings and fixtures, embedded pipes and metals obtained from the total demolition thereof;

15.2. The mill/plant machineries, equipment, materials, supplies, and all movable properties found in each of the thirty-four (34) buildings; and

15.3. Scrap iron and other metals, discarded or detached machine or equipment parts found in open areas and diggings.

NO IDENTITY

OF PROPERTIES SOLD TO

PNB AND TO ASIBAR

16. The question then is: were the properties sold to PNB as described in paragraph 14, the same properties sold to Asibar as described in paragraph 15 hereof? The evidence does not show that the properties sold to PNB are the same properties sold to Asibar. This is clear from the following considerations.

16.1. Exhs. A and A-1 to A-147 do not show that the materials and equipments found in the sixteen (16) buildings are located at the PBM Compound in Manggahan, Pasig. They do not state where these buildings are located. Exh. A simply states that the auction sale of properties listed in the 'attached Annexes' took place on November 23, 1983 at 10:00 o'clock in the morning 'at the compound of the mortgagors, located at Barrio Rosario, PBM Compound, Pasig, Metro-Manila'. Exh. T however shows that PBM has machineries and equipments in 12 buildings, namely Building Nos. 6, 12, 14, 16, 18, 20, 21, 22, 23, 25, 26 and 31, at the PBM Compound in Manggahan, Pasig. Even if it were assumed that the twelve (12) buildings are the same buildings bearing the same number referred to in Exhs. A to A-147 the fact remains that the machineries and the equipments found in these twelve (12) buildings have not been shown to be the same machineries and equipments that may be found in the thirty four (34) buildings described in Exhs. 1-C and 1-D-Asibar. For

there is even no proof that the twelve (12) buildings are among the thirty-four (34) buildings listed in Exhibits 1-C and 1-D-Asibar.

16.2. The four (4) buildings sold to PNB under Exhibits C and C-1 have not been shown to be among the same thirty-four (34) buildings. These four (4) buildings are (note: not legible) lots covered by TCT Nos. 43445, 853, 30196 and of Deeds of Rizal. This then suggests that the (not legible) the Province of Rizal. However, their x x x (not legible) Rizal has not been established much less does the evidence show that they are within the PBM Compound in Manggahan, Pasig, or that they are among the said thirty-four (34) buildings.

16.2.1. True it is that among the thirty-four (34) are: (a) scale house (No. 5, Exh. 1-C-Asibar); (b) a canteen (No. 27, Exh. 1-D-Asibar); (c) a carpentry/electrical shop (No. 30, Exh. 1-D-Asibar). However there is absolutely no proof that they are the same four (4) buildings described in Exhs. C and C--1.

16.3. PNB did not acquire any 'scrap iron and other metals, discarded or detached machine parts found in open areas and diggings' from PBM. They are not among the properties which PNB acquired under the certificates of sale (Exhs. A, A-1 to A-147), B and B-1, C and C-1). PNB did not transfer any such property to the RP under the deed of transfer (Exhs. D to D-3). Obviously, these properties belonged to PBM when they were sold to Asibar.

17. In brief, RP failed to prove by any competent and satisfactory evidence that the properties which it acquired from PNB are the same properties levied upon and sold at public auction to ASIBAR." (Rollo - G.R. No. 96056, pp. 31-33; Decision-Civil. Case No. 18426, pp. 5-7)

In an order dated June 6, 1990, the trial court amended "14.2" and "16.2" of the decision to read as follows:

xxx xxx xxx

"14.2. Seven (7) buildings erected on the lots covered by TCT Nos. 43445, 853, 30196 and 32897, Registry of Deeds of Rizal, namely: (a) a CANTEEN 2-storey semi-concrete; (b) one-storey electrical shop; (c) OPEN WAREHOUSE and carpentry shop; (d) scale house (wood and masonry); (e) Wire and Nail Plant (industrial) one-storey steel frame with an area of 6,489 erected on the lots covered by TCT Nos. 43445, 43338, 853 and 30196, land records of Rizal; (f) office building (commercial two-storey, wood and masonry, with an area of 240 square meters, first floor erected a lot covered by TCT No. 32343, Land records of Rizal; and (g) Mess Hall and dormitory, with a total area of 250 square meters, erected on the same above-mentioned lot (TCT No. 322843--Rizal) per Exhs. C and C-1".

19.3. The first sentence of paragraph 16.2 of the DECISION is AMENDED to read as follows:

16.2. The seven (7) buildings sold to PNB under Exhs. C and C-1 have not been shown to be among the said thirty-four (34) buildings."

xxx xxx xxx

(Rollo - G.R No. 96056, p 237)

Obviously, the trial court assumed that there are two (2) PBM compounds in Pasig, Metro Manila, one at Manggahan and one at Rosario. Under this premise, the trial court ruled that since the petitioner did not adduce evidence to prove that the buildings housing the chattels sold to PNB are located at the PBM Compound in Manggahan where the building machinery and equipment sold to Asibar were located, then there is no identity of properties between those sold earlier to PNB and later to Asibar. Such conclusion has no factual basis.

Asibar, himself, in his "Answer with Counterclaim never raised the issue as regards the location of the buildings machinery and equipment sold to him. Under his Answer with Counterclaim, captioned as SPECIAL AND AFFIRMATIVE DEFENSES" Asibar alleged:

"Assuming without admitting that the plaintiff's acquisition of the properties of the PBM in the alleged auction sale on November 23, 1983 by virtue of a foreclosure proceedings under a mortgage contract is true, its ownership is only limited to its rights as mortgagee and subject to other superior liens. It cannot affect the lien of the defendants Ricardo Zurita, et al. (complainants in NLRC Case No. 9-3296-84) over the properties of PBM already attached and existing to it at the time of the foreclosure and/or the plaintiff's acquisition of the PBM properties being said lien is a laborer's lien;

10. The lien of the defendants Ricardo Zurita, et al. and other laborers numbering 2,081 in all, complainants in the NLRC Case No. 9-3296-84 was already attached and existing over the PBM properties since 1981 the time when the said laborers were illegally dismissed or when PBM ceased its operations allegedly due to bankruptcy, and at the time when the PNB or the plaintiff allegedly acquired the PBM properties;

11. Said lien of the defendants Ricardo Zurita, et al. (complainants in NLRC Case No. NCR-9-3296-84) is superior and enjoys preference over the lien of the plaintiff as mortgagee and constitute an automatic first lien above all other earlier encumbrances on the PBM properties pursuant to the doctrine laid down by the Supreme Court in G. R. No. 68819-20, Ferrer, et al. v. Romillo, Jr., et al. promulgated on February 7, 1985; PCIB v. NAMAWU, 115 SCRA 873 and G.R. No. L-39742, Air Manila, Inc., et al. v. CIR;

12. The judgment award to the defendants Ricardo Zurita, et al. in NLRC Case No. NCR. 9-3296-84 which is in the nature of separation pay from PBM a corporation that had ceased operation due to bankruptcy, is superior to the rights of PNB as mortgagee and that of the plaintiff who just step into the shoes of the former over the properties of PBM pursuant to the doctrine laid down by the Supreme Court in G.R. No. 75161-62, PNB v. Delta Workers Union, et al., promulgated on April 1, 1987, that the rights of workers to separation pay from a bankrupt corporation is superior to a mortgagee's credit in the foreclosed property, and considering further that Art. 110 of the Labor Code is constitutional because Police Power prevails over non-impairment of the obligation and contract clause in the Constitution;

13. So that what the PNB can rightfully claim on the PBM properties is only the residue after the lien of the laborers of PBM (defendants Ricardo Zurita, et al., complainants against the PBM in NLRC Case No. NCR 9-3296-84) has been fully satisfied. Thus, this residue, if there is any, is the only thing that the plaintiff can rightfully claim, and it cannot further claim that the properties are already exempt from execution the fact that the plaintiff is the government as it merely steps into the shoes of the PNB. It is elementary that water cannot rise higher than its source;

14. Herein defendant being the purchaser of the properties of PBM transferred on account of the exercise of a superior and automatic first lien above all earlier encumbrances attached to the properties, evidenced by a certificate of sale, is therefore the rightful and legal owner of the properties subject hereof over and above and superior and paramount from the claim of ownership of the plaintiff;" (Rollo, pp. 215--217)

In fine, Asibar's defense to the complaint of the petitioner centered on his allegation that his right to the properties is superior to the right of the petitioner. The issue as to the proper disposition of the PBM properties has already been decided earlier by this court in the other PBM cases. The jurisprudence on the matter is now final and Asibar cannot resurrect the issue as to which is superior, the PNB foreclosure and purchase of the properties in 1983 or the claims of various creditors, including the workers, which we decided in 1985.

Moreover, it is worthy to note that respondent Sheriff Santos in itemizing the properties which he sold during the auction sale identified them as "Properties Located at PBM Compound, Pasig Metro Manila" (p. 194, Rollo, G.R. No. 96056) which signifies that there is only one PBM compound in Pasig, Metro Manila.

That there is only one PBM compound in Pasig is confirmed by the certification of Mayor Mario S. Raymundo of Pasig (Annex "B", Additional Argument filed by intervenor Phoenix Inc and Steel Corporation (PISCOR), to wit:

"C E R T I F I C A T I O N

TO WHOM IT MAY CONCERN:

THIS IS TO CERTIFY that since 1981 up to the present time there is only one facility referred to as the Philippine Blooming Mills (P.B.M.) Compound in the Municipality of Pasig, Metro Manila.

The above-mentioned facility is located at the boundary of Barangay Rosario and Manggahan. And, therefore, the P.B.M. Compound is sometimes part of Barangay Manggahan. In any case, there is only one facility known as the P.B.M. Compound in the Municipality of Pasig.

This certification is issued at the request of the Phoenix Iron and Steel Corporation (PISCOR) for location reference purposes.

Given this 5th day of March 1991 at Pasig, Metro Manila

(Sgd.) MARIO S. RAYMUNDO

Municipal Mayor"

(Rollo - G. R. No. 96056, p. 797)

Another certification issued by the Assessor's Office through Senior Taxmapper Bonifacio C. Maceda, Jr. clears the confusion as regards the address of the PBM Compound in Pasig which is referred to as Manggahan by some and Rosario by others, to wit:

"October 30, 1991

TO WHOM IT MAY CONCERN:

This is to certify that as per Real Property Tax Records of this office, the properties of the former facility known as the Philippine Blooming Mills Co., Inc., located in the Municipality of Pasig, are officially part of Manggahan and not part of Rosario based on the Tax Declaration of the said property.

Furthermore, although the Pasig facility of the Philippine Blooming Mills Co., Inc. since existence carried the address of Rosario; the tax mapping of the Municipality of Pasig initiated by this office in the period between 1987-1988 officially pegged the boundary of Rosario and Manggahan to be the point where the Litton Mills property ends and where the former Philippine Blooming Mills Co., Inc. begins.

This certification is issued for whatever purpose it may serve.

(Sgd.) BONIFACIO C. MACEDA, JR.

Sr. Taxmapper"

(Rollo - G. R. No. 96056, p. 798)

Any doubts regarding the existence of only one PBM Compound located at Pasig instead of two (2) as implied by the trial court is dispelled by Volume 2 of the 1989-1990 Metro Manila Citiguide (The Encyclopedic Map of Metro Manila) where Map 130 shows the PBM Compound, and Map 131 a portion thereof which indicates that the PBM compound in Pasig is only one and not made of two (2) parts, one in Rosario and another in Manggahan. (Annex "D", Additional Argument filed by PISCOR).

The location of the PBM Compound was never in issue before the trial court. It appears from the records that it was assumed to be a matter known to all the parties, that the parties were aware of the exact whereabouts of the compound in Pasig.

From the sole fact that some documents bore the address PBM, Rosario, Pasig, while other documents carried the

address PBM, Manggahan, Pasig, the trial court jumped to the conclusion that there are two (2) PBM compounds in the same town, in two barangays adjacent to each other, with each compound containing identical sets of buildings and the buildings containing identical but separate sets of extremely expensive machineries and equipment.

It was relatively easy for the trial court, if it wanted to decide the case on a matter not fully litigated by the parties, to ascertain the correct factual bases for its conclusion.

The PBM compound is at the boundary of the two barangays. This explains why in some documents, it used Rosario as an address while in others it used Manggahan. It is not logical for a steel company to establish two huge industrial complexes in two adjacent barangays of the same town and to treat them, as the trial court did, as two separate and distinct industrial complexes. The court should have received evidence to clearly establish what now appears from the records of these and earlier cases to be a wrong conclusion.

The chattels are clearly identified and numbered in the PNB and APT records of ownership. Conveniently for the private respondent, properties acquired by PNB for P76,720,800.00 in 1983 were sold to Asibar for only P5,950,000.00 as scrap and machineries in lots, each lot being the contents of one entire building, with no specifying details and no identification as to what types of machineries, serial numbers, etc. were sold for a nominal sum.

The well-entrenched principle that findings of facts of the Court of Appeals are conclusive and binding upon this Court is not without exceptions. Such exceptions include the following: when the findings are not supported by the record, glaringly erroneous as to constitute grave abuse of discretion or when the findings are grounded entirely on speculation, surmise or conjecture. (See *Chan v. Court of Appeals*, 33 SCRA 737 [1970]; *Baniqued v. Court of Appeals*, 127 SCRA 596 [1984]; *Moran, Jr. v. Court of Appeals*, 133 SCRA 88 [1984]; *Collector of Customs of Manila v. Intermediate Appellate Court*, 137 SCRA 3 [1985]; *Premier Insurance and Surety Corporation v. Intermediate Appellate Court*, 141 SCRA 423 [1986]; *Director of Lands, et al v. Funtilar, et al.*, 142 SCRA 57 [1986]; *Manlapaz v. Court of Appeals*, 147, SCRA 236 [1987]; *Chua Giok Ong v. Court of Appeals*, 149 SCRA 115 [1987]; *Francisco v. Mandi*, 152 SCRA 711 [1987]; *Knecht v. Court of Appeals*, 158 SCRA 80 [1988]; *Garcia v. Court of Appeals*, 33 SCRA 623 [1970]; *Tolentino v. De Jesus*, 56 SCRA 167 [1974]; *Ramos v. Court of Appeals*, 63 SCRA 331 [1975]; *Rizal Cement Co., Inc. v. Villareal*, 135 SCRA 15 [1985]; *Municipality of Meycauayan v. Intermediate Appellate Court*, 157 SCRA 640 [1988]; *Remalante v. Tibe, et al.*, 158 SCRA 138 [1988]; *Bunag v. Court of Appeals*, 158 SCRA 306 [1988]; *Santa Ana, Jr. v. Hernandez*, 18 SCRA 973 [1966]; *Joaquin v. Navarro*, 93 Phil. 257 [1953]; *Cruz v. Court of Appeals*, G.R. No. 85685 September 11, 1991)

Certainly, the trial court's ruling that there is no identity as between the PBM properties sold to PNB and those sold to Asibar because the petitioners did not prove the location of the same, whether they are at the PBM compound located at Manggahan or at the PBM Compound located at Rosario on the premise that there are two (2) PBM Compounds in Pasig is patently and glaringly erroneous amounting to a grave abuse of discretion.

Moreover, the trial court's finding that the petitioner failed to show that the machineries and equipment sold to PNB found inside twelve (12) buildings inside the PBM compound are the same as those sold to Asibar found in the thirty four (34) buildings and that the twelve (12) buildings are the same twelve buildings forming part of thirty four (34) buildings in which machineries and equipment were sold to Asibar is patently erroneous and not supported by the record.

The record shows that the petitioner mentions at least nine (9) buildings which are among the thirty four (34) buildings and that the machineries and equipment inside the said nine buildings were also sold to Asibar as

indicated by Exhibits 1 to 1-"D", Annex "D" Petition). These are: (1) Scale House which is Bid Item No. 5; (2) Machine Shop which is Bid Item No. 8; (3) Open Hearth Furnace which is Bid Item No. 12; (4) Oxygen Plant which is Bid Item No. 14; (5) Rolling Mills which is Bid Item No. 19; (6) Boiling Press Machine Building which is Bid Item No. 24; (7) Carpentry and Electrical Shop which is Bid item No. 30; (8) Nail Plant which is Bid Item No. 30; and (9) Motor Pool which is Bid Item No. 33. The certificate of sale (Annex "C" Petition) issued to PNB indicates that the chattels inside these buildings found at PBM Compound, Barrio Rosario, Pasig Metro Manila were sold to PNB. The certificate of sale describes with particularity the chattels found in these buildings. For example, citing only one building:

"Nail Plant

Nail Making Machine "Yamamura" built 1950, weight 420, type YA, 500 rpm, Serial No. 244.

9 Nail Making Machine "Yamamura" built 1950, weight 550, type YB, 400 rpm, Serial Nos. 252, 246, 245, 217, 218, 251, 250, and 249. (Rollo - G. R. No. 96056, p. 80)

xxx xxx xxx

On the other hand, the certificate of sale issued to Asibar by Sheriff Santos referred to the chattels found in the thirty four (34) buildings which include the aforesaid nine (9) buildings sold to Asibar as follows:

"x x x building materials and fixtures including imbedded pipes and metals and all kinds of materials obtained from the total demolition of each building, structure, or bid item described below; and all MILL/PLANT MACHINERY, EQUIPMENT, MATERIALS AND SUPPLIES and all movable properties found inside each building/structure described below."

Undoubtedly, the foregoing description of properties includes all chattels found inside the thirty four (34) buildings including those already sold to PNB in the nine (9) buildings.

Under these circumstances, the appellate court committed a reversible error in ruling that the lower court did not commit a grave abuse of discretion in its finding that there is no identity of PBM properties sold to PNB and Asibar.

With these findings, the inevitable conclusion is that the auction sale conducted by Sheriff Santos is null and void. As discussed earlier the NLRC has no jurisdiction over PBM properties which are already owned by third persons. As revealed by the records, the questioned PBM properties which were levied under a writ of execution dated November 13, 1987 issued in NLRC Case No. 9-3296-84 and subsequently sold in a public auction sale were already owned by PNB as evidenced by a certificate of sale dated November 23, 1983. The validity of the sale was not challenged by the respondents at the time of the said properties' levy. We ruled in a long line of cases that the power of the court to execute its judgment extends only to properties unquestionably owned by the judgment debtor. (See Consolidated Bank and Trust Corporation (Solid Bank) *supra*).

IV

The main issue in G. R. No. 96437 centers on whether or not the complaint filed by respondent Asibar against the petitioner states a cause of action.

In the lower court, the petitioner contended that the complaint is premature since paragraph 2 of the Deed of Sale states that the balance shall be payable only upon the dismissal of Civil Case No. 18426 (subject of the petition in G. R. No. 96056) and the same shall be secured within two (2) weeks from the signing of the Deed of Sale on February 10, 1988. In other words, the balance would be paid only when it is finally ascertained as to who between the APT and Asibar owns the properties sold by the latter. According to the petitioner, the private

respondent still has to present proof of the dismissal of Civil Case No. 18426. Hence, the petitioner argues that based on the Deed of Sale, the contract between the two (2) parties, the private respondent possessed no demandable right arising from the Deed of Sale.

The appellate court dismissed the petition on the ground that it has become moot and academic in view of the December 29, 1989 decision of the Regional Trial Court of Makati, Branch 60 in Civil Case No. 18426. The dispositive portion of the decision reads:

"WHEREFORE, the Court hereby renders judgment as follows:

The COMPLAINT dated November 25, 1987 is DISMISSED;

The Order dated December 16, 1987 (pp. 87-90, Records) as clarified in the Order dated July 19, 1988 granting the plaintiffs application for a writ of preliminary injunction (pp. 288-289, Id.) is LIFTED and SET ASIDE; and

The COUNTERCLAIMS of the defendants (other than SILVINO SANTOS and BIENVENIDO HERMOGENES) are DISMISSED." (Rollo- 96056, p. 42)

The appellate court ruled that the decision dismissing Civil Case No. 18426 and lifting the injunction rendered the petition moot and academic.

The petitioner now contends that the appellate court committed grave abuse of discretion in dismissing its petition for certiorari for being moot and academic. It argues that the dismissal of Civil Case No. 18426 provided in the Deed of Sale refers to a decision which is final and executory considering that Civil Case No. 18426 is for the annulment of the auction sale and certificate of sale from which respondent Asibar derived the properties which he sold to the petitioner. Until, therefore, the sale of these properties are declared valid by a final and executory decision, the respondent has no right and interest in the same properties which he could transfer and sell to the petitioner.

The well-settled rule is that when a party files a motion to dismiss the complaint for lack of cause of action he is deemed to hypothetically admit the allegations thereof. (Nicanor G. De Guzman, Jr. v. Court of Appeals, G. R. Nos. 92029-30, December 20, 1990)

It is clear from the Deed of Sale which was attached to the complaint and in fact the basis for the complaint, that the vendee, the petitioner herein, is obligated under that contract to pay the amount of P9,500,000.00 as follows:

xxx xxx xxx

b. Fourteen (14) days from the date Civil Case No. 18426 pending in Branch 60, is dismissed, the VENDEE shall pay the amount of Four Million Pesos (P4,000,000.00) to the VENDOR;

xxx xxx xxx

x x x In the event the restraining order is lifted, the payments under the above-schedule shall be resumed;" (pp. 1-4, Deed of Sale, Annex "B", Petition)

When, therefore, the trial court rendered its decision and dismissed Civil Case No. 18426 and at the same time lifted the injunction issued therein, the vendor, respondent Asibar, acquired a demandable right in against the petitioners in relation to their contract, the Deed of Sale.

"The cause of action must always consist of two elements: (1) the plaintiff's primary right and the defendant's corresponding primary duty, whatever may be the subject to which they relate - person, character, property or contract; and (2) the delict or wrongful act or omission of the defendant, by which the primary right and duty

have been violated. The cause of action is determined not by the prayer of the complaint but by the facts alleged. (R.C.L. 489 21; Section 126, C.C.P.I.; Cagibao v. Lim, 50 Phil. 844 [1924]; see Martin, supra) (De Guzman, Jr. v. Hon. Court of Appeals, et al. supra)

Under the facts as they then stood, the Court of Appeals did not commit grave abuse of discretion in dismissing the petition for being moot and academic.

Whether or not the Regional Trial Court's dismissal of Civil Case No. 18426 refers to a dismissal that is final and executory was a defense which should be raised in the answer and determined in the course of the proceedings of the case.

However, the issues in G. R. No. 96437 are inextricably intertwined with the issues in G. R. No. 96056. Since we have found that the Sheriff's sale to Asibar was null and void, it follows that Asibar could not have sold to Phoenix Iron and Steel Corporation the properties which did not lawfully belong to him.

This case started as a complaint seeking the payment to Asibar by petitioner Phoenix Iron and Steel Corporation (PISCOR) and Wilfredo Labayen, vice-president of PISCOR of the alleged balance based on the deed of sale executed by respondent Asibar in favor of PISCOR. The deed of sale covers PBM properties which Asibar acquired in the auction sale which is the subject matter in G.R. No. 96056 to wit:

"WHEREAS, the VENDOR is the purchaser at an auction sale conducted in NLRC Case No. 9--3296-84 of machineries and equipment located inside all the buildings in the realty covered by TCT No. (11486) 41183, per certificate of sale dated November 23, 1987, executed and issued by Silvino S. Santos, as an incident in the execution of the decision in the aforementioned case entitled Ricardo Zurita, et al. v. Philippine Blooming Mills, Co., Inc., (PBM) and BPI Investment Corporation, xxx" (Rollo - G. R. No. 96437, p. 38)

Considering our ruling in G.R. No. 96056 where we annulled the auction sale of February 23, 1987 conducted by Sheriff Silvino Santos, respondent Asibar has no rights and/or interest over the PBM properties, the same properties of which are concededly subject of the deed of sale between Asibar as vendor and petitioner PISCOR as vendee. In view of this development Asibar's complaint against the petitioner to recover the payment of the balance of the consideration agreed upon by the parties in the deed of sale has no more legal basis and should now be dismissed.

WHEREFORE, the Court renders judgment as follows:

1. In G.R. No. 89767, the petition is GRANTED. The questioned decision and resolution of the Court of Appeals are hereby reversed and set aside. The May 26, 1989 Order of the Securities and Exchange Commission is declared null and void;
2. In G.R. No. 96056, petition is GRANTED. The questioned decision of the Court of Appeals is hereby SET ASIDE. The questioned auction sale conducted by Sheriff Silvino Santos is declared null and void and the certificate of sale issued to respondent Alfredo Asibar is cancelled. The Temporary Restraining Order issued on November 29, 1990 is made PERMANENT; and
3. In G. R. No. 96437, the petition is declared MOOT and ACADEMIC. The Regional Trial Court of Pasig Branch 151 is ordered to DISMISS Civil Case No. 56806.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Cruz, Paras, Feliciano, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, and Nocon, JJ., concur.

Padilla, J., no part.

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