

SHARP INTERNATIONAL MARKETING, PETITIONER, VS. HON. COURT OF APPEALS (14TH DIVISION), LAND BANK OF THE PHILIPPINES AND DEOGRACIAS VISTAN, RESPONDENTS.*G.R. No. 93661. September 04, 1991*

Ponente: CRUZ, J.

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This case involves the aborted sale of the Garchitorena estate to the Government in connection with the Comprehensive Agrarian Reform Program. This opinion is not intended as a pre-judgment of the informations that have been filed with the Sandiganbayan for alleged irregularities in the negotiation of the said transaction. We are concerned here only with the demand of the petitioner that the private respondents sign the contract of sale and thus give effect thereto as a perfected agreement. For this purpose, we shall determine only if the challenged decision of the Court of Appeals denying that demand should be affirmed or reversed.

The subject-matter of the proposed sale is a vast estate consisting of eight parcels of land situated in the municipality of Garchitorena in Camarines Norte and with an area of 1,887.819 hectares. The record shows that on April 27, 1988, United Coconut Planters Bank (UCPB) entered into a Contract to Sell the property to Sharp International Marketing, the agreement to be converted into a Deed of Absolute Sale upon payment by the latter of the full purchase price of P3,183,333.33. On May 14, 1988, even before it had acquired the land, the petitioner, through its President Alex Lina, offered to sell it to the Government for P56,000,000.00, (later increased to P65,000,000.00). Although the land was still registered in the name of UCPB, the offer was processed by various government agencies during the months of June to November, 1988, resulting in the recommendation by the Bureau of Land Acquisition and Distribution in the Department of Agrarian Reform for the acquisition of the property at a price of P35,532.70 per hectare, or roughly P67,000,000.00. On December 1, 1988, a Deed of Absolute Sale was executed between UCPB and Sharp by virtue of which the former sold the estate to the latter for the stipulated consideration of P3,183,333.33. The property was registered in the name of the petitioner on December 6, 1988. On December 27, 1988, DAR and the Land Bank of the Philippines created a Compensation Clearing Committee (CCC) to expedite processing of the papers relating to the acquisition of the land and the preparation of the necessary deed of transfer for signature by the DAR Secretary and the LBP President. The following day, the CCC held its first meeting and decided to recommend the acquisition of the property for P62,725,077.29. The next day, December 29, 1988, DAR Secretary Philip Ella Juico issued an order directing the acquisition of the estate for the recommended amount and requiring LBP to pay the same to Sharp, 30% in cash and the balance in government financial instruments negotiable within 30 days from issuance by Sharp of the corresponding muniments of title.

On January 9, 1989, Secretary Juico and petitioner Lina signed the Deed of Absolute Sale. On that same day, the LBP received a copy of the order issued by Secretary Juico on December 29, 1988. On January 17, 1989, LBP Executive Vice President Jesus Diaz signed the CCC evaluation worksheet but with indicated reservations. For his part, LBP President Deogracias Vistan, taking into account these reservations and the discovery that Sharp had

acquired the property from UCPB for only P3.1 million, requested Secretary Juico to reconsider his December 29, 1988 order. Secretary Juico then sought the opinion of the Secretary of Justice as to whether the LBP could refuse to pay the seller the compensation fixed by the DAR Secretary. Meantime, on February 3, 1989, Vistan informed Juico that LBP would not pay the stipulated purchase price. The reply of the Justice Department on March 12, 1989, was that the decision of the DAR Secretary fixing the compensation was not final if seasonably questioned in court by any interested party (including the LBP); otherwise, it would become final after 15 days from notice and binding on all parties concerned, including the LBP, which then could not refuse to pay the compensation fixed. Reacting to Sharp's repeated demands for payment, Juico informed Lina on April 7, 1989, that DAR and LBP had dispatched a team to inspect the land for re-assessment. Sharp then filed on April 18, 1989, a petition for mandamus with this Court to compel the DAR and LBP to comply with the contract, prompting Juico to issue the following order:

Since the whole property of 1,887 hectares was acquired by Claimant for a consideration of P3 M, the buying price per hectare then was only about P1,589.83. It is incomprehensible how the value of land per hectare in this secluded Caramoan Peninsula can go so high after a short period of time. The increase is difficult to understand since the land is neither fully cultivated nor has it been determined to possess special and rich features or potentialities other than agricultural purposes.

We cannot fail to note that the value of land under CARP, particularly in the most highly developed sections of Camarines Sur, ranges from P18,000.00 to P27,000 per hectare.

In view of the above findings of fact, the value of P62,725,077.29 is definitely too high as a price for the property in question.

However, in order to be fair and just to the landowner, a re-evaluation of the land in question by an impartial and competent third party shall be undertaken. For this purpose, a well known private licensed appraiser shall be commissioned by DAR.

WHEREFORE, premises considered, Order is hereby issued for the reappraisal and re-evaluation of the subject property. For that purpose, DAR shall avail of the services of Cuervo and Associates to undertake and complete the appraisal of the subject property within 60 days from date of this Order.

On April 26, 1989, this Court referred the petition to the Court of Appeals, which dismissed it on October 31, 1989. In an exhaustive and well-reasoned decision penned by Justice Josue M. Bellosillo,[1] it held that mandamus did not lie because the LBP was not a mere rubber stamp of the DAR and its signing of the Deed of Absolute Sale was not a merely ministerial act. It especially noted the failure of the DAR to take into account the prescribed guidelines in ascertaining the just compensation that resulted in the assessment of the land for the unconscionable amount of P62 million notwithstanding its original acquisition cost of only P3 million. The decision also held that the opinion of the Secretary of Justice applied only to compulsory acquisition of lands, not to voluntary agreements as in the case before it. Moreover, the sale was null and void ab initio because it violated Section 6 of RA 6657, which was in force at the time the transaction was entered into.

The petitioners are now back with this Court, this time to question the decision of the Court of Appeals on the following grounds:

The Court of Appeals seriously erred in including in its Decision findings of facts which are not borne by competent evidence.

The Court of Appeals erred in holding that the valuation made on the Garchitorena estate has not yet become final.

The Court of Appeals erred in holding that the opinion of the Secretary of Justice is not applicable to the case

at bar.

The Court of Appeals erred in holding that herein petitioner is not entitled to a writ of mandamus.

The Court of Appeals erred in holding that the sale of Garchitorena estate from UCPB in favor of the petitioner is void.

The Court of Appeals erred in holding that the P62 million is not a just compensation.

We need not go into each of these grounds as the basic question that need only to be resolved is whether or not the petitioners are entitled to a writ of mandamus to compel the LBP President Deogracias Vistan to sign the Deed of Absolute Sale dated January 9, 1989.

It is settled that mandamus is not available to control discretion. The writ may issue to compel the exercise of discretion but not the discretion itself. Mandamus can require action only but not specific action where the act sought to be performed involves the exercise of discretion.[2]

Section 18 of RA 6657 reads as follows:

Sec. 18. Valuation and mode of compensation. — The LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and the LBP, in accordance with the criteria provided for in Secs. 16 and 17, and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land. x x x. (Italics supplied).

We agree with the respondent court that the act required of the LBP President is not merely ministerial but involves a high degree of discretion. The compensation to be approved was not trifling but amounted to as much as P62 million of public funds, to be paid in exchange for property acquired by the seller only one month earlier for only P3 million. The respondent court was quite correct when it observed:

As may be gleaned very clearly from EO 229, the LBP is an essential part of the government sector with regard to the payment of compensation to the landowner. It is, after all, the instrumentality that is charged with the disbursement of public funds for purposes of agrarian reform. It is therefore part, an indispensable cog, in the governmental machinery that fixes and determines the amount compensable to the landowner. Were LBP to be excluded from that intricate, if not sensitive, function of establishing the compensable amount, there would be no amount "to be established by the government" as required in Sec. 6, EO 229. This is precisely why the law requires the DAS, even if already approved and signed by the DAR Secretary, to be transmitted still to the LBP for its review, evaluation and approval.

It needs no exceptional intelligence to understand the implications of this transmittal. It simply means that if LBP agrees on the amount stated in the DAS, after its review and evaluation, it becomes its duty to sign the deed. But not until then. For, it is only in that event that the amount to be compensated shall have been "established" according to law. Inversely, if the LBP, after review and evaluation, refuses to sign, it is because as a party to the contract it does not give its consent thereto. This necessarily implies the exercise of judgment on the part of LBP, which is not supposed to be a mere rubber stamp in the exercise. Obviously, were it not so, LBP could not have been made a distinct member of PARC, the super body responsible for the successful implementation of the CARP. Neither would it have been given the power to review and evaluate the DAS already signed by the DAR Secretary. If the function of the LBP in this regard is merely to sign the DAS without the concomitant power of review and evaluation, its duty to "review/evaluate" mandated in Adm. Order No. 5 would have been a mere surplusage, meaningless, and a useless ceremony.

Thus, in the exercise of such power of review and evaluation, it results that the amount of P62,725,077.29 being claimed by petitioner is not the "amount to be established by the government." Consequently, it cannot be the amount that LBP is by law bound to compensate petitioner.

Under the facts, SHARP is not entitled to a writ of mandamus. For, it is essential for the writ to issue that the plaintiff has a legal right to the thing demanded and that it is the imperative duty of the defendant to perform the act required. The legal right of the plaintiff to the thing demanded must be well-defined, clear and certain. The corresponding duty of the defendant to perform the required act must also be clear and specific (*Enriquez v. Bidin*, L-29620, October 12, 1972, 47 SCRA 183; *Orencia v. Enrile*, L-28997, February 22, 1974, 55 SCRA 580; *Dionisio v. Paterno*, 103 SCRA 342; *Lemi v. Valencia*, 26 SCRA 203; *Aquino v. Mariano*, 129 SCRA 532).

Likewise, respondents cannot be compelled by a writ of mandamus to discharge a duty that involves the exercise of judgment and discretion, especially where disbursement of public funds is concerned. It is established doctrine that mandamus will not issue to control the performance of discretionary, non-ministerial, duties, that is, to compel a body discharging duties involving the exercise of discretion to act in a particular way or to approve or disapprove a specific application (*B.F. Homes, Inc. v. National Water Resources Council*, L-78529, Sept. 17, 1987; 154 SCRA 88). Mandamus will not issue to control or review the exercise of discretion by a public officer where the law imposes upon him the right or duty to exercise judgment in reference to any matter in which he is required to act (*Mata v. San Diego*, L-30447, March 21, 1975; 63 SCRA 170).

Even more explicit is R.A. 6657 with respect to the indispensable role of LBP in the determination of the amount to be compensated to the landowner. Under Sec. 18 thereof, "the LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and LBP, in accordance with the criteria provided in Secs. 16 and 17, and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land."

Without the signature of the LBP President, there was simply no contract between Sharp and the Government. The Deed of Absolute Sale dated January 9, 1989, was incomplete and therefore had no binding effect at all. Consequently, Sharp cannot claim any legal right thereunder that it can validly assert in a petition for mandamus.

In *National Marketing Corporation v. Cloribel*,^[3] this Court held:

... the action for mandamus had no leg to stand on because the writ was sought to enforce alleged contractual obligations under a disputed contract — disputed not only on the ground that it had failed of perfection but on the further ground that it was illegal and against public interest and public policy ...

The petitioner argues that the LBP President was under obligation to sign the agreement because he had been required to do so by Secretary Juico, who was acting by authority of the President in the exercise of the latter's constitutional power of control. This argument may be dismissed with only a brief comment. If the law merely intended LBP's automatic acquiescence to the DAR Secretary's decision, it would not have required the separate approval of the sale by that body and the DAR. It must also be noted that the President herself, apparently disturbed by public suspicion of anomalies in the transaction, directed an inquiry into the matter by a committee headed by former Justice Jose Y. Feria of this Court. Whatever presumed authority was given by her to the DAR Secretary in connection with the sale was thereby impliedly withdrawn.

It is no argument either that the Government is bound by the official decisions of Secretary Juico and cannot now renege on commitment. The Government is never estopped from questioning the acts of its officials, more so if they are erroneous, let alone irregular.^[4]

Given the circumstances attending the transaction which plainly show that it is not merely questionable but downright dishonest, the Court can only wonder at the temerity of the petitioner in insisting on its alleged right to be paid the questioned purchase price. The fact that criminal charges have been filed by the Ombudsman against the principal protagonists of the sale has, inexplicably, not deterred or discomfited it. It does not appear that the

petitioner is affected by the revelation that it offered the property to the Government even if it was not yet the owner at the time; acquired it for P3 million after it had been assured that the sale would materialize; and sold it a month later for the bloated sum of P62 million, to earn a gross profit of P59 million in confabulation with some suspect officials in the DAR. How the property appreciated that much during that brief period has not been explained. What is clear is the public condemnation of the transaction as articulated in the mass media and affirmed in the results of the investigations conducted by the FERIA Fact-Finding Committee, the Senate House Joint Committee on Agrarian Matters, and the Office of the Ombudsman.

It would seem to the Court that the decent thing for the petitioner to do, if only in deference to a revolted public opinion, was to voluntarily withdraw from the agreement. Instead, it is unabashedly demanding the exorbitant profit it would derive from an illegal and unenforceable transaction that ranks as one of the most cynical attempts to plunder the public treasury.

The above rulings render unnecessary discussion of the other points raised by the petitioner. The Court has given this petition more attention than it deserves. We shall waste no more time in listening to the petitioner's impertinent demands. LBP President Deogracias Vistan cannot be faulted for refusing to be a party to the shameful scheme to defraud the Government and undermine the Comprehensive Agrarian Reform Program for the petitioner's private profit. We see no reason at all to disturb his discretion. It merits in fact the nation's commendation.

WHEREFORE, the petition is DENIED, with costs against the petitioner. It is so ordered.

Narvasa, (Chairman), Griño-Aquino, and Medialdea, JJ., concur.

[1] With Marigomen and Sempio-Diy, JJ., concurring.

[2] Association of Small Landowners in the Phil. v. Sec. of Agrarian Reform, 175 SCRA 343 citing Lambs v. Phipps, 22 Phil. 456.

[3] 131 Phil. Reports 924.

[4] Republic v. Aquino, 120 SCRA 186; Republic v. Phil. Rabbit Bus Lines, Inc., 32 SCRA 211; Luciano v. Estrella, 34 SCRA 269.

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