

HEIRS OF INOCENCIO SANTIAGO, REPRESENTED BY JOSE CUNANAN, PETITIONERS, VS. HON. JOSE P. CASTRO, JUDGE, CFI, RIZAL, BRANCH IX, QUEZON CITY; HON. ANTONIO P. SOLANO, JUDGE, CFI, RI...

G.R. Nos. 62014-16. April 02, 1984

Ponente: RELOVA, J.

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RELOVA, J.:

Petition for certiorari (1) to annul and set aside the order of respondent Judge Jose P. Castro of the then Court of First Instance of Rizal, Branch IX in Quezon City, in Civil Case No. Q-32452, entitled: "Francisco Edades, et al. vs. Tan Cheng Leng, et al.", directing "the demolition of the illegally constructed houses, shanties and other structures of the plaintiffs as contained in the order of this court dated July 2, 1982, in accordance with existing laws and procedures on the matter"; (2) to set aside the order of respondent Judge Antonio P. Solano of the then Court of First Instance of Rizal, Branch XVI in Quezon City, in Civil Case No. Q-35920, entitled: "Heirs of Inocencio Santiago, represented by Jose Cunanan vs. The General Manager, National Housing Authority, et al.", dismissing the petition for a writ of prohibition, quieting of title with preliminary injunction and denying the application for a writ of preliminary injunction as the same has "become moot and academic"; and, (3) to annul and set aside the demolition notices issued in September 1982 by the City Engineer of Quezon City. Petitioners claim that the aforementioned orders of respondent Judges were issued with grave abuse of discretion and beyond their jurisdiction.

On October 19, 1982, upon Urgent Motion, filed by petitioners, through counsel, the Court issued a restraining order "enjoining the respondents or their agents and representatives from demolishing the petitioners' houses pending resolution of the prayer for a writ of preliminary injunction, effective as of this date and continuing until otherwise ordered by this Court." (p. 46, Rollo)

The established background facts insofar as pertinent to this petition, follow:

On July 3, 1972, Mabuhay Real Estate Investment and Financing Corporation, owned by Bernabe Ang, filed Civil Cases Nos. Q-16689, Q-16691 and Q-16693 (CFI, Rizal) against Elisa Gonzales, Igmidio Tolentino and Emmanuel Gonzales, respectively. The complaints commonly alleged that the plaintiff is the registered owner of the parcels of land in question, having purchased them from J. M. Tuason & Co., Inc. and for which corresponding Transfer Certificates of Title were duly issued in its name; that the above-named defendants were unlawfully occupying the said parcels of land to the extent that it could not use the same.

Defendants Eliza Gonzales, Igmidio Tolentino and Emmanuel Gonzales resisted the complaints, claiming that they are the rightful owners of their respective lots based on the Spanish title or grant to their predecessor-in-interest, Inocencio Santiago, which was registered under Act No. 496, pursuant to Presidential Decree No. 892 (LRC No. Q-341 in Quezon City and LRC No. 80, LRC Record No. 49124 in Manila).

On November 19, 1974, the lower court rendered its decision on the three cases, the trial of which, by agreement of the parties was consolidated. The dispositive portion thereof reads:

"x x x. It follows that the defendants' claim must fall since the basis of their claim was the invalidity of OCT No. 735. By invoking the doctrine laid down by the Supreme Court in the above cases which was reiterated by the same tribunal in the case of *J. M. Tuason & Co., Inc. vs. Hon. Judge Felix V. Makasiar*, judgment is rendered in favor of the plaintiff against the defendants as follows:

"1. The defendant Elisa Gonzales, her heirs and all parties claiming any right or title under her are hereby ordered to vacate the premises and turn over possession of the same to the plaintiff; to pay the sum of P60.00 a month by way of rental from July 1960 until she actually vacates the premises; and to pay the sum of P500.00 for attorney's fees and costs of the suit;

"2. Defendant Igmidio Tolentino, his heirs and all parties claiming rights or title under him are ordered to vacate the premises and turn over possession of the same to the plaintiff; to pay the sum of P240.00 a month by way of rent from June 1960 until he actually vacates the premises; to pay the sum of P600.00 for attorney's fees and costs of suit;

"3. Defendant Emmanuel Gonzales, his heirs and all parties claiming rights or title under him to vacate the premises and turn over possession of the same to the plaintiff; to pay the sum of P300.00 a month by way of rental from April 1966 until he actually vacates the premises; to pay the sum of P500.00 for attorney's fees, and costs of suit." (pp. 142-143, Rollo)

The foregoing judgment became final and executory when the defendants did not appeal. However, when they refused to leave the premises, plaintiff filed a motion for execution which the trial court granted. The matter was brought to the then Court of Appeals which rendered a decision on December 29, 1980 in CA-G.R. Nos. 08367-69-SP, entitled: "*Jose Cunanan, et al. vs. Hon. Ricardo P. Tensuan*", pertinent portion of which states:

"With respect to petitioners Elisa Gonzales, Igmidio Tolentino and Emmanuel Gonzales, it is plain that they have failed to make out a case for the issuance of the extra-ordinary writs prayed for. The decision in Civil Cases Nos. Q-16689, Q-16691 and "Q-16693, ordering them to vacate the premises in question, has long become final and executory for failure on their part to appeal therefrom. As such, its execution is a matter of right. Contrary to their assertion, we are unable to find supervening facts and circumstances which would render execution of judgment impossible or which justify the postponement of implementation of the writs of execution (*Magdangal vs. Hawaiian-Philippine Co.*, 65 SCRA 101). Not only were they classified by the National Housing Authority as 'disqualified' for purposes of government assistance by way of relocation and resettlement, but they were also declared, in effect, not to be owners of the land they are occupying when the Supreme Court in the case of *J. M. Tuason & Co., Inc. vs. Hon. Makasiar, et al.* (G.R. No. L-12674) upheld the validity of the Original Certificate of Title No. 735, the root of the title of Mabuhay Real Estate Investment and Financing Corporation, plaintiff in said ejectment cases.

"Neither could the above-named petitioners validly avail in this Court the remedy of relief from judgment under Rule 38 of the Rules of Court under their alternative prayer. Suffice it to say that, if at all, it should have been sought from the Court of First Instance of Rizal by means of a verified petition specifically grounded on fraud, accident, mistake, or excusable negligence, (Sec. 2) within sixty days after they have learned of the decision and not more than six months after the judgment or order was entered (Sec. 3).

"With respect to the other petitioners, namely, Jose Cunanan, Paulina Cunanan, Domingo Cunanan, Antonio Soriano, Emilia Cunanan, Constantino Tolentino, Felix Tolentino and Papa Ignacio, the present petition is not proper for want of jurisdiction by this Court. It appears that they were being evicted by the respondent City Engineer of Quezon City by virtue of a clearance from the National Housing Authority under Letters of Instruction No. 19 and 19-A after due investigation wherein they were required to appear and present their side. Their remedy, if any lies elsewhere. In fact, except for Jose Cunanan and Domingo Cunanan, the other

petitioners had already filed a similar case with this Court, docketed as CA-G. R. No. 07610-SP, but this was dismissed outright in a resolution promulgated on March 20, 1978, it reads:

"Herein petitioners pray for the issuance of a writ of preliminary injunction and prohibition to enjoin respondent City Engineer from executing his Orders of demolition of the houses of the petitioners allegedly 'constructed within a government or private lot in violation of LOI 19'.

"This petition should be dismissed outright on the ground that this Court has no jurisdiction to issue the writs prayed for.

"The petitioners had prematurely instituted this action before Us. They should have brought first this action in the City Court which has original jurisdiction on ejectment cases and which may grant the preliminary injunction prayed for (I Moran, Rules of Court, 69; Padilla vs. De Jesus, 95 Phil. 688). As it is, there is no judgment or order of the lower court which is subject for review, either by appeal or writ of error, by this Court. This Court has original jurisdiction to issue writ of mandamus, prohibitions, injunction, certiorari and all other auxiliary writs only in aid of its appellate jurisdiction (R.A. 296, Sec. 30).

"WHEREFORE, this petition is hereby summarily dismissed.

"SO ORDERED."

"WHEREFORE, the instant petition for certiorari is hereby dismissed and the restraining order heretofore issued by this Court immediately lifted. Costs against the petitioners." (pp. 145-146, Rollo)

Herein petitioners submit that instead of demolishing only the house of Elisa Gonzales and Emmanuel Gonzales, who were defendants in Civil Cases Nos. Q-16689; Q-16691 and Q-16693, "the Sheriff demolished 24 houses including that of the two defendants, that is, the 22 houses demolished belong to persons not parties to the case and therefore cannot be reached by any judgment or order in the said cases, or in any other case. x x x The thing most intriguing and beyond the understanding of the 22 families whose houses were demolished without due process of law in these cases (Q-16689; Q-16691 and Q-16693) is that they have presented to the Court evidence that the area from where they were unduly ejected is part of the titled land of their forebear, Inocencio Santiago. They presented the Spanish title; the approved plan, the tax declaration all in the name of Inocencio Santiago and their registration of the whole area covered by the Spanish title yet the court did not give an iota of consideration on these documented facts but gave credit to the unsupported claims of the City Engineer that they (petitioners) are squatters. x x x After the illegal demolition, the respondents were not satisfied but moved for redemolition, of the houses which the 22 petitioners (in the three cases) hurriedly salvaged and formed into barong-barong if only to shelter their family members, mostly babies, children (and) ailing adults." (pp. 16-17, Rollo)

On the other hand, Tan Cheng Leng sued the families who are occupying his property located in Palanca Street, Brixton Hill, Barangay Doña Imelda, Quezon City before the Barangay Court of Barangay Doña Imelda, Quezon City. After a conference, 11-squatter families promised to voluntarily vacate the premises; the others refused. Thus, Tan Cheng Leng sought the assistance of the National Housing Authority to relocate the families who refused to vacate his property. In response, the Manager of the National Housing Authority issued a clearance for the demolition of the houses and structures of the petitioners but the same was not implemented because the area is covered by the Zonal Improvement Program (ZIP) of Quezon City.

On May 20, 1981, without having received a Notice of Demolition, petitioners filed before the then Court of First Instance of Rizal, Branch IX in Quezon City, a petition for a writ of prohibition and preliminary injunction, entitled: "Francisco Edades, et al., vs. Tan Cheng Leng, et al." docketed therein as Civil Case No. Q-32452. However, in an order, dated June 13, 1981, the petition was dismissed on the ground that it states no cause of action and that petitioners had not exhausted all available administrative remedies.

On July 2, 1982, respondent Judge Jose P. Castro, the Presiding Judge of the then Court of First Instance of Rizal, Branch IX in Quezon City, issued an order allowing the implementation of the demolition of the houses of petitioners in the subject property. Upon motion of respondent Tan Cheng Leng, respondent Judge Castro issued the questioned Order of September 23, 1982, directing the authorities concerned, particularly the National Housing Authority and the Quezon City Engineer's Office, to cause the demolition of the illegally constructed houses, shanties and other structures of petitioners.

Similarly, spouses Ramon Albert and Maria Puno seek the assistance of the Mayor of Quezon City for the ejectment of herein petitioners on their land. After several representations and requests of the said spouses, the City Mayor recommended to the National Housing Authority the issuance of a clearance to demolish and/or relocate the families occupying the same. Acting upon the recommendation of the City Mayor, respondent National Housing Authority issued a clearance authorizing the Mayor to dismantle and/or remove all illegal structures on subject property pursuant to LOI 19 and its implementing directives from the Office of the President. Prior to its implementation, a conference was held between the parties therein, wherein 22 of the 28 families executed a KASUNDUAN, dated August 1, 1982, to vacate the premises voluntarily.

However, on August 6, 1982, petitioners filed a Petition for Prohibition and Quieting of Title with prayer for a writ of preliminary injunction in the then Court of First Instance of Rizal, Branch XVI in Quezon City, entitled: "Heirs of Inocencio Santiago, represented by Jose Cunanan vs. The National Housing Authority, et al.", which was docketed therein as Civil Case No. Q-35920, alleging that public respondents acted without jurisdiction or in excess of jurisdiction by ordering the demolition of their structures. However, no copy of the order of demolition was attached. Thus, on August 27, 1982, respondent Judge Antonio P. Solano of Branch XVI, dismissed the petition for not being sufficient in form and substance.

Hence, this petition filed on October 7, 1982.

We cannot sustain the petition.

1. The properties in question are registered and titled in the respective names of private respondents, namely: (a) Tan Cheng Leng, under TCT Nos. 196095 and 90307; (b) Ramon Araneta Albert and Maria Lourdes Puno, under TCT No. 268627; and (3) the Mabuhay Real Estate Investment and Financing Corporation under TCT No. 25859, which originated from OCT No. 735 in the name of J. M. Tuason & Co., Inc., all in the Registry of Deeds of Quezon City. This Court, in the case of Benin vs. Tuason, 57 SCRA 531, 595, held that the "the document, Annex A of the complaint of Albina Santiago, et al., was neither a titulo de informacion posesoria nor a title by composicion con el estado, and it did not establish the right of ownership of their predecessor-in-interest, Inocencio Santiago, Albina Santiago and her co-plaintiffs had based their claim of ownership on that document (Annex A). This Court held in that previous case that the document was unavailing against Transfer Certificate of Title No. 119 of J. M. Tuason & Co., Inc. and against Original Certificate of Title No. 735." Thus, herein petitioners, claiming as heirs of Inocencio Santiago, cannot derogate the validity and conclusiveness of Original Certificate Of Title No. 735, and of the certificates of title that are derived from said original certificate of title; and, if the late Inocencio Santiago did not become the owner of the disputed property by virtue of the document, Annex A, then herein petitioners, as his alleged heirs, have not acquired said ownership either, much less the right of possession.

2. The petition has become moot and academic inasmuch as the houses and shanties of petitioners which were constructed in the property of the Mabuhay Real Estate Investment & Financing Corporation had already been demolished on October 8 and 9, 1982, as shown in the accomplishment Report of the City Engineer of Quezon City (p. 213, Rollo).

3. In Civil Case No. Q-32452, respondent Judge Jose P. Castro, on June 13, 1981, issued an Order dismissing the petition for prohibition filed by Francisco Edades, et al. versus Tan Cheng Leng, et al. for the reason that-

"x x x on February 2, 1981, the General Manager of the NHA issued a clearance to dismantle and remove from the Tan property (the property involved in this petition) all structures illegally introduced by the persons enumerated therein. Said clearance shall be implemented within three (3) months from receipt.

"The motion to dismiss alleges that the petition states no cause of action and that the petitioner has not exhausted all available administrative remedies.

"Indeed, there is no cause of action, while there was clearance to dismantle, the implementing arm has not made any effort to enforce the demolition, and the best evidence is that the local government did not notify the petitioners to vacate and as a matter of fact, the local government allowed the expiration of the clearance without utilizing it.

"As to the second ground, granting that the local government is ready to implement the clearance, the remedy of the petitioners is to avail of administrative remedies before resorting to the Courts. In the instant case, the petitioners came immediately to the Court which should not be the case." (p. 406, Rollo)

4. In Civil Case No. Q-35920, entitled: "Heirs of Inocencio Santiago, represented by Jose Cunanan vs. The General Manager, National Housing Authority, et al." respondent Judge Antonio P. Solano, on August 27, 1982, issued the other questioned Order, as follows:

"The petition for a Writ of prohibition and quieting of title, filed by petitioners thru counsel, not being sufficient in form and substance, is hereby DISMISSED.

"Accordingly, the application for writ of preliminary injunction, dated August 12, 1982, having become moot and academic, is hereby DENIED." (p. 409, Rollo)

The order dismissing the petition for prohibition, in Civil Case No. Q-32452 is dated June 13, 1981, and the order denying the petition in Civil Case No. Q-35920 is dated August 27, 1982. Instant petition was filed on October 7, 1982. As pointed out by respondent National Housing Authority, in its Memorandum dated September 27, 1983, the aforesaid orders have become final and executory. Herein petitioners did not refute this contention.

"The petitioner is seeking to avail of the remedy of certiorari as a substitute for appeal. The questioned order of dismissal is appealable and the proper remedy should have been to appeal the same. No circumstance had been shown to explain why such procedure was not observed, nor to justify a deviation from the same as to make available a petition for certiorari in lieu of taking an appropriate appeal." (Velasco Vda. de Caldito vs. Segundo, 117 SCRA 573)

"Plaintiffs cannot resort to the special civil actions of certiorari and mandamus because these remedies are not available when, as in this case, there was a remedy by appeal and the period for appealing had already expired." (G.L. Enterprises, Inc. vs. Señeris, 111 SCRA 735)

WHEREFORE, for lack of merit, instant petition is DISMISSED and the temporary restraining order issued on October 19, 1982 is hereby DISSOLVED.

SO ORDERED.

Makasiar, Acting C.J., Concepcion, Jr., Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, and Gutierrez, Jr., JJ., concur.

Aquino, J., in the result.

Fernando, C.J., and Teehankee, J., on leave.

De la Fuente, J., no part.

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