

EN BANC

[G.R. No. 194461, January 07, 2020]

**ZOMER DEVELOPMENT COMPANY, INC., PETITIONER, VS.
SPECIAL TWENTIETH DIVISION OF THE COURT OF APPEALS,
CEBU CITY AND UNION BANK OF THE PHILIPPINES,
RESPONDENTS.**

DECISION

LEONEN, J.:

Courts have the discretion to entertain an action for declaratory relief.^[1] They cannot be compelled, by a writ of mandamus, to resolve the case when they exercise this discretion.

This is a Petition for Mandamus^[2] which seeks to compel the Court of Appeals to rule on the constitutionality of Section 47^[3] of Republic Act No. 8791, or the General Banking Law of 2002, in CA-G.R. CV No. 00288. In its Decision,^[4] the Court of Appeals refused to rule on the constitutionality of the statute, deferring the resolution of this issue to this Court.

Zomer Development Company, Inc. (Zomer Development), a domestic corporation,^[5] owned three (3) parcels of land in Cebu City covered by Transfer Certificate of Title No. 59105, Transfer Certificate of Title No. 59123, and Transfer Certificate of Title No. 59214.^[6] The properties were mortgaged to International Exchange Bank as security for its loan.^[7]

When Zomer Development failed to pay its indebtedness, International Exchange Bank foreclosed on the properties. A Notice of Extra-judicial Foreclosure Sale was posted and published on October 18, 2001, informing the public that the properties would be sold at an auction.^[8]

When the auction was conducted, International Exchange Bank emerged as the highest bidder. Thus, the Sheriff issued to it Certificates of Sale on November 19, 2001.^[9] The Certificates of Sale provided for a period of redemption of twelve months from registration, "or sooner and/or later, as provided for under applicable laws."^[10]

On December 10, 2001, International Exchange Bank registered the Certificates of Sale in the Register of Deeds. Consequently, Transfer Certificates of Title Nos. 361006, 361007, and 361008 were issued in its name.^[11]

On February 18, 2002, Zomer Development filed a Complaint for *Declaration of Nullity of Notice of Sale, Certificate of Sale & TCTs and Declaration as*

Unconstitutional Sec. 47, RA No. 8791.^[12] It argued that Section 47 of Republic Act No. 8791,^[13] or the General Banking Law of 2002, violates its right to equal protection since the law provides a shorter period for redemption of three (3) months or earlier to juridical entities compared to the one (1) year redemption period given to natural persons. This discrimination, it argued, gives "undue advantage to lenders who are non-banks."^[14]

Copies of the Complaint were furnished to the Office of the Solicitor General upon order of the Regional Trial Court. The Office of the Solicitor General, however, did not participate in the case.^[15]

On March 24, 2004, the Regional Trial Court dismissed the Complaint. The trial court refused to rule on the constitutionality of Republic Act No. 8791, Section 47. According to the trial court, to rule on the issue will deprive the Republic of its right to due process since it was not heard on the issue and was not impleaded as party defendant in the case.^[16]

Zomer Development appealed this Decision to the Court of Appeals, arguing that the Republic was not required to be impleaded when questions regarding the constitutionality of a statute are raised.^[17]

On October 18, 2010, the Court of Appeals rendered a Decision^[18] dismissing the appeal "without prejudice to appellant's filing of the appropriate case before the Supreme Court."^[19] The Court of Appeals categorized Zomer Development's Complaint as one for declaratory relief and refused to "make a definitive ruling"^[20] on the constitutionality issue, citing Rule 63, Section 5 of the Rules of Court on the discretion of courts to entertain petitions for declaratory relief.

The Court of Appeals held that "the case is novel and can be best resolved by the Supreme Court[,]"^[21] since any pronouncement may have "far reaching effects"^[22] on existing procedural rules like Supreme Court Circular No. 7-2002.^[23]

Zomer Development now files this Petition for Mandamus^[24] before this Court, praying that the Court of Appeals be compelled to resolve the issue on the constitutionality of Republic Act No. 8791, Section 47 in CA G.R. CV No. 00288.

Petitioner argues that mandamus was the proper remedy since the Court of Appeals evaded its duty to decide on the constitutionality of Republic Act No. 8791, Section 47.^[25] It adds that in declining to rule on the issue, the Court of Appeals deprived it of its right to due process since it did not put an end to the controversy between the parties.^[26]

Private respondent, on the other hand, counters that the plain, speedy, and adequate remedy was a motion for reconsideration or an appeal; thus, Petitioner cannot use a petition for mandamus as a substitute for a lost appeal.^[27] It contends that Petitioner no longer has the right to be protected by a writ of mandamus, since ownership over the disputed properties has already been consolidated.^[28] Private respondent likewise argues that the Petition has become moot in light of *Goldenway*

Merchandising Corporation v. Equitable PCI Bank,^[29] which has already passed upon the constitutionality of Republic Act No. 8791, Section 47.^[30]

From the arguments of the parties, this Court was confronted with the following issues for resolution:

First, whether or not the Petition for Mandamus was the proper remedy, or more succinctly, whether the Court of Appeals can be compelled to rule on the constitutionality of a statute by writ of mandamus; and

Second, whether or not the case has already become moot in light of *Goldenway Merchandising Corporation v. Equitable PCI Bank*.^[31]

However, in order to fully pass upon these issues, this Court later on directed the Office of the Solicitor General to comment on the constitutionality of Section 47 of Republic Act No. 8791. The Bangko Sentral ng Pilipinas and the Bankers Association of the Philippines were also directed to submit their comments on the issue, in order to afford an opportunity to be heard by the parties that may be directly affected by the resolution of the issue.^[32]

In its Comment,^[33] the Office of the Solicitor General insists that the constitutionality of Section 47 of Republic Act No. 8791 has already been settled in *Goldenway Merchandising Corporation*.^[34] It points out that the provision's constitutionality was further reiterated in *White Marketing Development Corporation v. Grandwood Furniture and Woodwork, Inc.*^[35] Thus, it was "indubitable" that the provision did not violate Petitioner's right to equal protection.^[36]

The Bankers Association of the Philippines and the Bangko Sentral ng Pilipinas, in their respective Comments,^[37] echo the Office of the Solicitor General's sentiments, and reiterate that *Goldenway Merchandising Corporation* has already settled this issue with finality.^[38]

In its Consolidated Reply,^[39] Petitioner reiterates its earlier argument in the Petition that Section 47 was unconstitutional as it was "a classic example of class legislation which is intended to favor banks, quasi-banks and other trust entities to the prejudice of juridical persons."^[40]

Thus, even after the submission of comments from parties that may be affected by this Court's resolution, the issues before us remain the same: *first*, whether or not the Court of Appeals can be compelled by writ of mandamus to pass upon the constitutionality of a statute, and *second*, whether or not the issue of constitutionality has been rendered moot.

While not raised as an issue by the parties before this Court, we find that for a complete resolution of all controversies in this case, we must likewise first pass upon the issue of whether or not the trial court erred in dismissing the Complaint on the ground that the Office of the Solicitor General was not impleaded as a party.

The trial court erred in dismissing the Complaint on the ground that the Republic, represented by the Office of the Solicitor General, was not impleaded in this case.

The Complaint, while denominated as a *Declaration of Nullity of Notice of Sale, Certificate of Sale & TCTs and Declaration as Unconstitutional Sec. 47, RA No. 8791*, was, in reality, an action for declaratory relief. Petitioner, in seeking the nullification of the foreclosure sale, questioned the validity of Republic Act No. 8791, Section 47 insofar as the law limits the redemption period for juridical persons to only three (3) months. Petitioner was a juridical person affected by the shorter redemption period. Under Rule 63, Section 1 of the Rules of Court, any person whose rights are affected by a statute may bring an action before the trial court to determine its validity:

SECTION 1. *Who May File Petition.* - Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof[,] bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

In dismissing the action, the trial court cited Rule 63, Section 3 of the Rules of Court, in that the Solicitor General was required to be impleaded in all actions where the validity of a statute was in question:

SECTION 3. *Notice on Solicitor General.* - In any action which involves the validity of a statute, executive order or regulation, or any other governmental regulation, the Solicitor General shall be notified by the party assailing the same and shall be entitled to be heard upon such question.

The Rules, however, only require that notice be given to the Solicitor General. They do not state that if the Solicitor General fails to participate in the action, the action would be dismissed.

The Administrative Code provides that the Solicitor General shall appear in any action involving the validity of a statute "when in his [or her] judgment his intervention is necessary *or when requested by the Court.*"^[41]

In this instance, the trial court sent a copy of the Complaint to the Office of the Solicitor General.^[42] The Office of the Solicitor General, however, did not participate in the case. The failure of the Office of the Solicitor General to participate, however, should not prejudice a litigant's cause.

The trial court dismissed the action on the ground that the Solicitor General may be deprived of due process. Due process, however, has already been accorded to the Solicitor General when he/she was furnished with a copy of the Complaint. The Solicitor General's failure to comment on the Complaint should have the effect of waiving his or her right to participate in the case. To hold otherwise would be to give the Solicitor General more power than what the law grants. The Solicitor General

does not have and should not have unbridled control over cases that were originally filed between private parties.

II

The grant of declaratory relief is discretionary on the courts. Courts may refuse to declare rights or to construe instruments if it will not terminate the controversy or if it is unnecessary and improper under the circumstances. A discretionary act cannot be the subject of a petition for mandamus.

While Petitioner's Complaint before the trial court was captioned as one for *Declaration of Nullity of Notice of Sale, Certificate of Sale & TCTs and Declaration as Unconstitutional Sec. 47, RA No. 8791*, it was, as the Court of Appeals correctly found, a petition for declaratory relief. Petitioner sought the declaration of Republic Act No. 8791 unconstitutional so that, in effect, the foreclosure proceedings of the properties now held by private respondent would be declared void.

Courts, however, have the discretion of whether to entertain an action for declaratory relief. In *Chan v. Galang* :^[43]

Declaratory relief is discretionary upon the court to entertain. It may refuse to exercise the power to declare rights and to construe instruments in any case where the declaration or construction is not necessary and proper at the time under all the circumstances[.]^[44]

The same paragraph now appears in Rule 63, Section 5 of the Rules of Court:

SECTION 5. *Court Action Discretionary.* - Except in actions falling under the second paragraph of section 1 of this Rule, the court, *motu proprio* or upon motion, may refuse to exercise the power to declare rights and to construe instruments in any case where a decision would not terminate the uncertainty or controversy which gave rise to the action, or in any case where the declaration or construction is not necessary and proper under the circumstances.

Although the Regional Trial Courts have exclusive original jurisdiction over actions for declaratory relief,^[45] the Court of Appeals exercises appellate jurisdiction over final judgments of the trial court.^[46] Thus, the Court of Appeals may, in appeals of actions for declaratory relief, apply Rule 63 of the Rules of Court in resolving the appeal.

The Court of Appeals, in deferring the question of the validity of Republic Act No. 8791, Section 47 to the Court of Appeals, cited Rule 63, Section 5 of the Rules of Court, and held that to resolve the Petition "would be an empty discourse and will not terminate the controversy. "^[47] This was an exercise of the Court of Appeals' discretion.

Any person may file a verified petition for mandamus against any tribunal, corporation, board, officer, or person who "unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station[.]"^[48] Petitioner submits that the Court of Appeals had the duty to pass