

SECOND DIVISION

[G.R. No. 206345, January 23, 2017]

**NATIONAL HOME MORTGAGE FINANCE CORPORATION,
PETITIONER, V. FLORITA C. TAROBAL, RESPONDENT.**

DECISION

PERALTA, J.:

Before us is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court which seeks the reversal of the Decision^[2] dated May 22, 2012, and Resolution^[3] dated March 7, 2013 of the Court of Appeals (CA) in CA G.R. SP No. 118824. The CA found no grave abuse of discretion on the part of the Regional Trial Court (RTC), Branch 73, Antipolo City, in issuing the Writ of Possession in favor of National Home Mortgage Finance Corporation (*NHMFC*) on a house and lot covered by Transfer Certificate of Title (*TCT No. 580124*) located at Lot 15, Block 20, Phase I, Golden City Subdivision, Brgy. Dolores, Taytay, Rizal.

The factual antecedents are as follows:

Joy M. Dela Cruz (*Dela Cruz*) was the registered owner of a house and lot covered by TCT No. 580124 with an area of 103.60 square meters.^[4] On May 15, 1990, she obtained a housing loan from China Banking Corporation (*CBC*) in the amount of P257,400.00.^[5] To secure the loan, she executed a Loan and Mortgage Agreement covering the said property in favor of the bank. Dela Cruz also issued a Promisory Note covering the amount of the loan.

On December 5, 1990, through a Purchase of Loan Agreement, the bank assigned the loan of Dela Cruz to petitioner.^[6] Because of Dela Cruz's' failure to pay her monthly amortization and arrearages, petitioner filed an Application for Extra-Judicial Foreclosure of Real Estate Mortgage to foreclose the mortgage account of Dela Cruz. Notice of Sheriff's Sale was issued and published in a newspaper of general circulation for three (3) consecutive weeks.^[7]

On the date of the public auction on September 30, 1994, petitioner was the highest bidder. A Certificate of Sale was thereafter issued and registered with the Register of Deeds for the Province of Rizal on February 8, 2008.^[8] Despite receipt of the demand to surrender and turn over the possession of the foreclosed property, Dela Cruz failed to heed the demand.^[9] She also failed to redeem the property within the one-year period of redemption from the date of the registration of the sale. The period of redemption expired on February 8, 2009.^[10]

In 2007,^[11] petitioner conducted a Housing Fair^[12] and a third party had applied for the subject property. Petitioner published in the newspaper, one month prior to the housing fair, all inventories of its foreclosed properties.^[13]

On April 23, 2010, petitioner, upon the initiative of the buyer in the Housing Fair, filed an *Ex-Parte* Petition for Writ of Possession before the RTC, Branch 73, Antipolo City, for an issuance of a writ of possession on the subject property.^[14]

In an Order dated January 17, 2011, the RTC granted the petition.^[15] The RTC ratiocinated that the period of redemption had already expired with no redemption having been made, there was no justifiable ground why the writ of possession should not be issued.^[16]

On February 15, 2011, a Motion for Reconsideration was filed by respondent Florita C. Tarobal. She alleged that sometime in May 2005, she bought the subject property as a result of the broker-assisted negotiation with the authorized unit holders. Upon acquisition, respondent and her relatives, took immediate control of the subject property and made the same their family home. Respondent claimed that she was neither notified of the public auction nor was a party to the foreclosure proceedings in violation of her right to due process. Hence, the certificate of sale cannot be enforced against her. She averred that she was lawfully occupying the subject property even at the time of the purported sale. She had introduced improvements, constructions or structures on the subject property in the amount of P250,000.00.^[17]

On March 17, 2011, a Contract to Sell covering the subject property was executed between petitioner and Gilda J. Torres, the buyer in the Housing Fair Program of petitioner.^[18]

On March 28, 2011, the RTC issued a Writ of Possession ordering the deputy sheriff to place petitioner in physical possession of the subject property. On March 30, 2011, the Sheriff's Notice to Vacate was issued ordering Dela Cruz and all persons claiming rights under her to voluntarily vacate the property on or before April 3, 2011. On April 5, 2011, the sheriff executed the writ of possession by ejecting Dela Cruz from the subject property, and all persons claiming rights under her as mortgagor, including herein respondent. The subject property was then delivered and turned over to petitioner as the mortgagee,^[19] and subsequently to Gilda J. Torres.^[20]

On April 6, 2011, respondent, who is a transferee of mortgagor Dela Cruz, filed a Petition for *Certiorari* before the CA. Respondent contended that there was grave abuse of discretion on the part of the RTC when it issued the writ of possession without resolving first her motion for reconsideration in violation of her right to due process.^[21] In a Decision dated May 22, 2012, the CA denied the petition for *certiorari*. The *fallo* of the Decision states:

WHEREFORE, finding no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent, the instant petition is **DENIED**. The assailed Order dated January 17, 2011, the Writ of Possession dated March 28, 2011 and the Notice to Vacate dated March 30, 2011 are **AFFIRMED**. However, respondent National Home Mortgage Finance Corporation is hereby ordered to give priority to herein petitioner Flora C. Tarobal to re-acquire to (sic) subject property under the provisions of the laws and rules related.

SO ORDERED.^[22]

A motion for reconsideration/clarification was filed by the petitioner with regard to the last sentence in the dispositive portion of the Decision ordering petitioner to give priority to herein respondent to reacquire the subject property under the provisions of the laws and rules related. Petitioner argued that re-acquisition by respondent of the subject property would adversely affect or defeat the rights of the buyer in the Housing Fair. It will allegedly violate the rights and interest of the buyer and invalidate whatever binding agreement or contract forged by petitioner and the said buyer. Further, petitioner averred that the Order giving priority to petitioner to re-acquire the subject property "clashes" with the CA's Decision sustaining the propriety of the issuance of the writ of possession.^[23]

On March 7, 2013, the motion for reconsideration/clarification was denied by the CA. The CA ratiocinated:

The propriety of the issuance of the writ of possession is a different matter from the order giving petitioner the priority right to re-acquire the subject property. There is no incompatibility between the two (2) orders. It should be stressed that the writ of possession was properly issued as the period to redeem had lapsed with no redemption having been made by the mortgagor. A Certificate of Sale had been issued to respondent NHMFC being the highest bidder in the public auction sale of the foreclosed property. Hence, it was merely ministerial on the part of the RTC, Branch 73, Antipolo City to issue the writ of possession.

In ordering the respondent NHMFC to give priority to petitioner to re-acquire the subject property, this Court gave **due consideration to the fact that petitioner** who is **presently occupying the subject property** and has introduced improvements, constructions and structures thereon, has vigorously manifested her desire to recover the property by paying the full amount stated at the Housing Fair. Even the Housing and Urban Development Coordinating Council favorably acted on her request that she be given priority to re-acquire the subject property. Petitioner claimed that even before the foreclosure and the Housing Fair, she has been communicating with respondent NHMFC to pay and settle the price of the said property. But the same fell on (sic) deaf ears. Respondent NHMFC did not refute this assertion of petitioner. It is but fair and just that petitioner be given priority to re-acquire the subject property under the provisions of the laws and rules related.^[24]

Hence, this petition, raising the following issues:

- A.) WHETHER OR NOT THE ASSAILED PORTION OF THE COURT OF APPEALS' DECISION IS WITHIN THE FUNCTION, OFFICE AND SCOPE OF THE WRIT OF CERTIORARI UNDER RULE 65 OF THE RULES OF COURT;

- B.) WHETHER OR NOT THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN ORDERING PETITIONER TO GIVE PRIORITY TO RESPONDENT TO REACQUIRE THE FORECLOSED PROPERTY GIVEN THE FACTS AND CIRCUMSTANCES OBTAINING.^[25]

It is the contention of the petitioner that the assailed portion of the CA Decision is beyond the issues which are proper in a petition for *certiorari* under Rule 65 of the Rules of Court. Petitioner argued that the CA should have limited itself to whether or not the RTC committed grave abuse of discretion in issuing the assailed Order granting the writ of possession in its favor. According to petitioner, while the CA Decision affirmed its right to possess the subject property, the recognition of respondent's right to re-acquire the subject property is unwarranted and beyond the issues raised in the petition for *certiorari*. As to the endorsement of the Housing and Urban Development Coordinating Council (HUDCC), petitioner averred that it is not a directive to petitioner, nor an assurance to respondent, that her request would be acted upon by petitioner, because allegedly there is no more basis to prioritize the request of respondent.

In her Comment,^[26] respondent insisted that she be given priority rights to reacquire the subject property and that she would deliver to petitioner the required acquisition price. According to respondent, the endorsement of the HUDCC of her request to acquire the subject property may be considered as a directive to petitioner because HUDCC has the power of supervision over petitioner.

In its Reply,^[27] petitioner stated that when respondent filed the petition for *certiorari* with the CA on April 6, 2011, petitioner was already in possession of the subject property since the writ of possession had been implemented. As in fact, respondent prayed that she be restored to the possession and enjoyment of the subject property. It was during the pendency of the case with the CA that respondent sent a written request to the HUDCC offering to reacquire the subject property. Petitioner reiterated that the HUDCC's action on respondent's letter requests merely partakes of an endorsement that respondent be given priority to reacquire the subject property. It is a mere request for a kind and favorable action on respondent's concern, and not an order for the petitioner to accede to respondent's request.

We grant the petition.

The doctrine is that *certiorari* will issue only to correct errors of jurisdiction and that no error or mistake committed by a court will be corrected by *certiorari* unless said court acted without jurisdiction or in excess thereof or with such grave abuse of discretion as would amount to lack of jurisdiction. The writ is available only for these purposes and not to correct errors of procedure or mistake in the findings or conclusions of the judge.^[28] It is strictly confined to the determination of the propriety of the trial court's jurisdiction whether it has jurisdiction over the case and if so, whether the exercise of its jurisdiction has or has not been attended by grave abuse of discretion amounting to lack or excess of jurisdiction.^[29]

The issue brought by respondent before the CA is whether or not there was grave abuse of discretion on the part of the RTC when it issued the writ of possession without resolving first the motion for reconsideration filed by respondent allegedly in violation of her right to due process. Hence, the subject of the petition for *certiorari* filed by respondent is the questioned Order of the RTC dated July 17, 2011 which granted the *ex parte* petition for the issuance of writ of possession in favor of petitioner. Therefore, the CA erred when it passed judgment on the right of respondent to reacquire the subject property. It overstepped the bounds of its