

## SECOND DIVISION

**[ G.R. No. 126102, December 04, 2000 ]**

**ORTIGAS & CO. LTD., PETITIONER, VS. THE COURT OF APPEALS  
AND ISMAEL G. MATHAY III, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

This petition seeks to reverse the decision of the Court of Appeals, dated March 25, 1996, in CA-G.R. SP No. 39193, which nullified the writ of preliminary injunction issued by the Regional Trial Court of Pasig City, Branch 261, in Civil Case No. 64931. It also assails the resolution of the appellate court, dated August 13, 1996, denying petitioner's motion for reconsideration.

The facts of this case, as culled from the records, are as follows:

On August 25, 1976, petitioner Ortigas & Company sold to Emilia Hermoso, a parcel of land known as Lot 1, Block 21, Psd-66759, with an area of 1,508 square meters, located in Greenhills Subdivision IV, San Juan, Metro Manila, and covered by Transfer Certificate of Title No. 0737. The contract of sale provided that the lot:

1. ...(1) be used exclusively...for residential purposes only, and not more than one single-family residential building will be constructed thereon,...

x x x

6. The BUYER shall not erect...any sign or billboard on the roof...for advertising purposes...

x x x

11. No single-family residential building shall be erected...until the building plans, specification...have been approved by the SELLER...

x x x

14. ...restrictions shall run with the land and shall be construed as real covenants until December 31, 2025 when they shall cease and terminate...<sup>[1]</sup>

These and the other conditions were duly annotated on the certificate of title issued to Emilia.

In 1981, the Metropolitan Manila Commission (now Metropolitan Manila Development Authority) enacted MMC Ordinance No. 81-01, also known as the Comprehensive Zoning Area for the National Capital Region. The ordinance reclassified as a commercial area a portion of Ortigas Avenue from Madison to Roosevelt Streets of Greenhills Subdivision where the lot is located.

On June 8, 1984, private respondent Ismael Mathay III leased the lot from Emilia Hermoso and J.P. Hermoso Realty Corp.. The lease contract did not specify the purposes of the lease. Thereupon, private respondent constructed a single story commercial building for Greenhills Autohaus, Inc., a car sales company.

On January 18, 1995, petitioner filed a complaint against Emilia Hermoso with the Regional Trial Court of Pasig, Branch 261. Docketed as Civil Case No. 64931, the complaint sought the demolition of the said commercial structure for having violated the terms and conditions of the Deed of Sale. Complainant prayed for the issuance of a temporary restraining order and a writ of preliminary injunction to prohibit petitioner from constructing the commercial building and/or engaging in commercial activity on the lot. The complaint was later amended to implead Ismael G. Mathay III and J.P. Hermoso Realty Corp., which has a ten percent (10%) interest in the lot.

In his answer, Mathay III denied any knowledge of the restrictions on the use of the lot and filed a cross-claim against the Hermosos.

On June 16, 1995, the trial court issued the writ of preliminary injunction. On June 29, 1995, Mathay III moved to set aside the injunctive order, but the trial court denied the motion.

Mathay III then filed with the Court of Appeals a special civil action for certiorari, docketed as CA-G.R. SP No. 39193, ascribing to the trial court grave abuse of discretion in issuing the writ of preliminary injunction. He claimed that MMC Ordinance No. 81-01 classified the area where the lot was located as commercial area and said ordinance must be read into the August 25, 1976 Deed of Sale as a concrete exercise of police power.

Ortigas and Company averred that inasmuch as the restrictions on the use of the lot were duly annotated on the title it issued to Emilia Hermoso, said restrictions must prevail over the ordinance, specially since these restrictions were agreed upon before the passage of MMC Ordinance No. 81-01.

On March 25, 1996, the appellate court disposed of the case as follows:

WHEREFORE, in light of the foregoing, the petition is hereby GRANTED.  
The assailed orders are hereby nullified and set aside.

SO ORDERED.<sup>[2]</sup>

In finding for Mathay III, the Court of Appeals held that the MMC Ordinance No. 81-01 effectively nullified the restrictions allowing only residential use of the property in question.

Ortigas seasonably moved for reconsideration, but the appellate court denied it on August 13, 1996.

Hence, the instant petition.

In its Memorandum, petitioner now submits that the "principal issue in this case is whether respondent Court of Appeals correctly set aside the Order dated June 16, 1995 of the trial court which issued the writ of preliminary injunction on the sole ground that MMC Ordinance No. 81-01 nullified the building restriction imposing exclusive residential use on the property in question."<sup>[3]</sup> It also asserts that "Mathay III lacks legal capacity to question the validity of conditions of the deed of sale; and he is barred by estoppel or waiver to raise the same question like his principals, the owners."<sup>[4]</sup> Lastly, it avers that the appellate court "unaccountably failed to address" several questions of fact.

Principally, we must resolve the issue of whether the Court of Appeals erred in holding that the trial court committed grave abuse of discretion when it refused to apply MMC Ordinance No.81-01 to Civil Case No. 64931.

But first, we must address petitioner's allegation that the Court of Appeals "unaccountably failed to address" questions of fact. For basic is the rule that factual issues may not be raised before this Court in a petition for review and this Court is not duty-bound to consider said questions.<sup>[5]</sup> CA-G.R. SP No. 39193 was a special civil action for certiorari, and the appellate court only had to determine if the trial court committed grave abuse of discretion amounting to want or excess of jurisdiction in issuing the writ of preliminary injunction. Thus, unless vital to our determination of the issue at hand, we shall refrain from further consideration of factual questions.

Petitioner contends that the appellate court erred in limiting its decision to the cited zoning ordinance. It avers that a contractual right is not automatically discarded once a claim is made that it conflicts with police power. Petitioner submits that the restrictive clauses in the questioned contract is not in conflict with the zoning ordinance. For one, according to petitioner, the MMC Ordinance No. 81-01 did not prohibit the construction of residential buildings. Petitioner argues that even with the zoning ordinance, the seller and buyer of the re-classified lot can voluntarily agree to an exclusive residential use thereof. Hence, petitioner concludes that the Court of Appeals erred in holding that the condition imposing exclusive residential use was effectively nullified by the zoning ordinance.

In its turn, private respondent argues that the appellate court correctly ruled that the trial court had acted with grave abuse of discretion in refusing to subject the contract to the MMC Ordinance No. 81-01. He avers that the appellate court properly held the police power superior to the non-impairment of contract clause in the Constitution. He concludes that the appellate court did not err in dissolving the writ of preliminary injunction issued by the trial court in excess of its jurisdiction.