346 Phil. 189

THIRD DIVISION

[G.R. No. 112733, October 24, 1997]

PEOPLE'S INDUSTRIAL AND COMMERCIAL CORPORATION, PETITIONER, VS. COURT OF APPEALS AND MAR-ICK INVESTMENT CORPORATION, RESPONDENTS.

D E C I S I O N

ROMERO, J.:

This petition for review on *certiorari* of the Decision[1] of the Court of Appeals arose from the complaint for *accion publiacana de posesion* over several subdivision lots that was premised on the automatic cancellation of the contracts to sell those lots.

Private respondents Mar-ick Investment Corporation is the exclusive and registered owner of Mar-ick Subdivision in Barrio Buli, Cainta, Rizal. On May 29, 1961, private respondents entered into six (6) agreements with petitioner People's Industrial and Commercial Corporation whereby it agreed to sell to petitioner six (6) subdivision lots.[2] Except for Lot No. 8 that has an area of 253 square meters, all the lots measure 240 square meters each. Five of the agreements, involving Lots. Nos. 3, 4, 5, 6 and 7, similarly stipulate that the petitioner agreed to pay private respondents for each lot, the amount of P 7,333.20 with a down payment of P 480.00. The balance of P 6,853.20 shall be payable in 120 equal monthly installments of P 57.11 every 30th of the month, for a period of ten years. With respect to Lot No. 8, the parties agreed to the purchase price of P7,730.00. With a down payment of P506.00 and equal monthly installments of P60.20.

All the agreements have the following provisions:

> "9. Should the PURCHASER fail to make the payment of any of the monthly installments as agreed herein, within One Hundred Twenty (120) days from its due date, this contract shall, by the mere fact of nonpayment, expire by it self and become null and void without necessity of notice to the PURCHASER or of any judicial declaration to the effect, and any and all sums of money paid under this contract shall be considered and become rentals on the property, and in this event, the PURCHASER should he/she be in possession of the property shall become a mere intruder or unlawful detainer of the same and may be ejected therefrom by means provided by law for trespassers or unlawful detainers. Immediately after the expiration of the 120 days provided for in this clause, the OWNER shall be at liberty to dispose of and sell said parcel of land to any other person in the same manner as if this contract had never been executed or entered into.
>
> The breach by the PURCHASER of any of the conditions considered herein shall have the same effect as non-payment of the installments of the

purchase price.

In any of the above cases the PURCHASER authorizes the OWNER or her representative to enter into the property to take possession of the same and take whatever action is necessary or advisable to protect its rights and interest in the property , and nothing that may be done or made by the PURCHASER shall be considered as revoking this authority or a denial thereof."[3]

After the lapse of ten years, however, petitioner still had not fully paid for the six lots; It had paid only the down payment and eight (8) installments, even after private respondents had given petitioner a grace period of four months to pay the arrears.[4] As of May 1, 1980, the total amount due to private respondents under the contract was P214,418.00.[5]

In this letter of March 30, 1980 to Mr. Tomas Siatianum (Siatianun) who signed the agreements for petitioner, private respondent's counsel protested petitioner's encroachment upon a portion of its subdivision particularly Lots Nos. 2, 3, 4, 5, 6, 7, and 8. A portion of the letter reads:

"Examinations conducted on the records of said lots revealed that you once contracted to purchase said lots but your contracts were cancelled for non-payment of the stipulated installments.

Desirous of maintaining good and neighborly relations with you, we caused to send you this formal demand for you to remove your said wall within fifteen (15) days from your receipt hereof, otherwise, much to our regret, we shall be constrained to seek redress before the courts and at the same time charge you with reasonable rentals for the use said lots at the rate of One (P1.00) Peso per square meter per month until you shall have finally removed said wall."[6]

Private respondent reiterated its protest against the encroachment in a letter dated February 16, 1981.[7] It added that petitioner had failed to abide by its promise to remove the encroachment, or to purchase the lots involved "at the current price or pay the rentals on the basis of the total area occupied, all within a short period of time." It also demanded the removal of the illegal constructions on the property that had prejudiced the subdivision and its neighbors.

After a series of negotiations between the parties, they agreed to enter into a new contract to sell[8] involving seven (7) lots, namely, Lots Nos. 2, 3, 4, 5, 6, 7 and 8, with a total area of 1,693 square meters. The contract stipulates that the previous contracts involving the same lots (actually minus Lot No.2) "have been cancelled due to the failure of the PURCHASER to pay the stipulated installments." It states further that the new contract was entered into "to avoid litigation, considering that the PURCHASER has already made use of the premises since 1981 to the present without paying the stipulated installments." The parties agreed that the contract price would be P423,250.00 with a down payment of P42,325.00 payable upon the

signing of the contract and the balance of P380,925.00 payable in forty-eight (48) equal monthly amortization payments of P7,935.94.

The new contract bears the date of October 11, 1983 but neither of the parties signed it. Thereafter, Tomas Siatianum issued the following checks in the total amount of P37,642.72 to private respondent: (a) dated March 4, 1984 for P10,000.00; (b) dated March 31, 1984 for P10,000.00; (c) dated April 30, 1984 for P 10,000.00 ; (d) dated May 31, 1984 for P 7,079.00, and (e) dated May 31, 1984 for P563.72.[9]

Private respondent received but did not encash those checks. Instead, on July 12, 1984 it filed in the Regional Trial Court of Antipolo, Rizal, a complaint for accion publicianan de posesion against petitioner and Tomas Siatianum, as president and majority stockholder of petitioner.[10] It prayed that petitioner be ordered to removed the wall on the premises and to surrender in possession of lots Nos. 2 to 8 of Block 11 of the Mar-ick subdivision, and that petitioner and Tomas Siatianum be ordered to pay: (a) P259,074.00 as reasonable rentals for the use of the lots from 1961," plus P1,680,074.00 per month from July 1, 1984 up to and until the premises shall have been vacated and the wall demolished"; (b) P10,000.00 as attorney's fees; (c) moral and exemplary damages, and (d)costs of suit. In the alternative , the complaint prayed that should the agreements be deemed not automatically cancelled, the same agreements should be declared null and void.

In due course, the lower court[11] rendered a decision finding that the original agreements of the parties were validly cancelled in accordance with provision No.9 of each agreement. The parties did not enter into a new contract in accordance with Art. 1403 (2) of the Civil Code as the parties did not sign the draft contract. Receipt by private respondent of the five checks could not amount to perfection of the contract because private respondent never encash and benefited from those checks. Furthermore, there was no meeting of the minds between the parties because Art 1475 of the Civil Code should be read with the Statute of Frauds that requires the embodiment of the contract in a note or memorandum.

The lower court opined that the checks represented the deposit under the new contract because petitioner failed to prove that those were monthly installments that private respondent refused to accept. What petitioner prove instead was the fact that it was not able to pay the rest of the installments because of a strike, fire and storm that affected its operations. Be that is as it may, what was clearly proven was that both parties negotiated a new contract after the termination of the first. Thus, the fact that the parties tried to negotiate a new contract indicated that they considered that first contract as already cancelled."

With respect to petitioner's allegation on a "free right-of-way" constituted on Lot No. 2, the lower court found that the agreement thereon was oral and not in writing. As such, it was not in accordance with Art. 749 of the Civil Code requiring that, to be valid, a donation must be in a public document. Consequently, because of the principle against unjust enrichment, petitioner must pay rentals for the occupancy of the property. The lower court disposed of the case as follows:

> "IN VIEW OF ALL THE FOREGOING, Defendant Corporation is hereby directed to return subjects Nos. 2, 3, 4, 5, 6, 7, and 8 to Plaintiff

Corporation, and to pay the latter the following amounts:

1. reasonable rental of P1.00 per square meter per month from May 29,1961, for Lots Nos. 3, 4, 5, 6, 7, and 8, and from July 21, 1984, for lot No. 2, up to the date they will vacate said lots. The amount of P4,735.21 (Exhibit 'R') already paid by defendant corporation to plaintiff corporation for the six (6) lots under the original contracts shall be deducted from the said rental;

2. attorney's fees in the amount of P10,000.00; and

3. costs of the suit.

SO ORDERED."

Petitioner elevated the case to the Court of Appeals. However, or October 16, 1992, the Court of Appeals affirmed in toto the lower court's decision. Petitioner's motion for reconsideration having been denied, it instituted the instant petition for review on certiorari raising the following issues for resolution:

(1) whether or not the lower court had jurisdiction over the subject matter of the case in view of the provisions of Republic Act No. 6552 and Presidential Decree No. 1344;

(2) whether or not there was a perfected and enforceable contract of sale (sic) on October 11, 1983 which modified the earlier contracts to sell which had not been validly rescinded;

(3) whether or not there was a valid grant of right of way involving Lot No. 2 in favor of petitioner; and

(4) whether or not there was justification for the grant of rentals and the award of attorney's fees in favor of private respondent.[12]

The issue of jurisdiction has been precluded by the principle of estoppel. It is settled that lack of jurisdiction may be assailed at any stage of the proceedings. However, a party's participation therein the issue.[13] Petitioner undoubtedly has actively participated in the proceedings from its inception to date. In its answer to the complaint, petitioner did not assail the lower court jurisdiction ; instead, it prayed for affirmative relief.[14] Even after the lower court had decided against it, petitioner continued to affirm the lower court's jurisdiction by elevating the decision to the appellate court,[15] hoping to obtain a favorable decision but the Court Of Appeals affirmed the court a quo's ruling. Then and only then did petitioner raise the issue of jurisdiction-in its motion for reconsideration of the appellate court's decision. Such a practice, according to Tijam v. Sibonghanoy,[16] cannot be countenanced for reasons of public policy.

Granting, however, that the issue was raised seasonably at the first opportunity, still, petitioner has incorrectly considered as legal bases for its position on the issue of jurisdiction the provisions of P.D. Nos. 957 and 1344 and Republic Act No. 6552 P.D. No. 957, the "Subdivision and Condominium Buyers' Protective Decree" which took effect upon its approval on July 12, 1976, vest upon the National Housing

Authority (NHA) "exclusive jurisdiction to regulate the real estate trade and business " in accordance with the provisions of the same decree.[17] P.D. No. 1344, issued on April 2, 1978, empowered the National Housing Authority to issue a writ of execution in the enforcement of its decisions under P.D. No. 957.

These decrees, however, were not yet in existence when private respondents invoked provision No. 9 of the agreements of contracts to sell and cancelled these in October 1971.[18] Article 4 of the Civil Code provides that laws shall have no retroactive effect unless the contrary is provided. Thus, it is necessary that an express provision for its retroactive application must be made in law.[19] There being no such provision in both P.D. Nos. 957 and 1344, these decrees cannot be applied to a situation that occurred years before their promulgation. Moreover, granting that said decreed indeed provide for a retroactive application, still, these may not applied in this case.

The contracts to sell of 1961 were cancelled in virtue of provision No. 9 thereof to which the parties voluntarily bound themselves. In Manila Bay Club Corp. v. Court of Appeals,[20] this Court interpreted as requiring mandatory compliance by the parties, a provision in a lease contract that failure or neglect to perform or comply with any of the covenants, conditions, agreements or restrictions stipulated shall result in the automatic termination and cancellation of the lease. The Court added:

> "x x x . Certainly, there is nothing wrong if the parties to the lease contract agreed on certain mandatory provisions concerning their respective rights and obligations, such as the procurement of insurance and the rescission clause. For it is well to recall that contracts are respected as thelaw between the contracting parties, and they may establish such stipulations, clauses, terms and conditions as they may want to include. As long as such agreements are not contrary to law, moral, good customs, public policy or public order they shall have the force of law between them."

Consequently, when petitioner failed to abide by its obligation to pay the installments in accordance with the contracts to sell, provision No. 9 automatically took effect. That private respondent failed to observe Section 4 of Republic Act No. 6552, the "Realty installment Buyer Protection Act," is if no moment. That section provides that "(I)f the buyers fails to pay the installment due at the expiration of the grace period, the seller may cancel the contract after thirty days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by a notarial act." Private respondent's cancellation of the agreements without a duly notarized demand for rescission did not mean that it violated said provision of law. Republic Act No. 6552 was approved on August 26, 1972, long after provision No.9 of the contracts to sell had become automatically operational. As with P.D. Nos. 957 and 1344, Republic act No. 6552 does not expressly provide for its retroactive application and, therefore, it could not have encompassed the cancellation of the contracts to sell in this case.

At this juncture, it is apropos to stress that the 1961 agreements are contracts to sell and not contracts of sale. The distinction between these contracts is graphically depicted in Adelfa Properties, Inc. v. Court of Appeals,[21] as follows: