

DECISION - August 28, 2006

Republic of the Philippines
Court of Appeals
Manila

FIFTEENTH DIVISION

DEVELOPMENT BANK OF
THE PHILIPPINES,

Petitioner,

LUZONVILLE HOMEOWNERS
ASSOCIATION,*

Petitioner- in- Intervention,

CA-GR SP No. 89051

Members:

DE LOS SANTOS, E.R., J.

Chairman

SANTIAGO-LAGMAN, A.

PIZARRO, N.B., JJ.;

-versus-

Hon. SAMUEL H. GAERLAN as
Presiding Judge, Branch 92,
Regional Trial Court, Quezon
City, and PRIME
NEIGHBORHOOD
ASSOCIATION,

Respondents.

Promulgated:

AUG 28 2006



D E C I S I O N

PIZARRO, J.;

This is a *Petition for Certiorari*¹ filed by Development Bank of
the Philippines²(DBP, for brevity) seeking to annul and set aside the

* Resolution of the Special Fourth Division dated August 17, 2005, granting Luzonville's Motion
for Intervention; Rollo, pp. 128-129.

supposed rights. It also averred that the trial court could not belatedly refuse to enforce the writ of possession against respondents since it had already issued a total of four(4) possessory writs directing the ouster of all occupants of the lot, including respondents therein. The Supreme Court resolved the case in favor of Austria and Quintana as third party claimants holding the mortgaged properties.

On the other hand, the respondents in said case asserted that the trial court correctly held that the writ of possession can only be implemented against the debtor/mortgagor and his successors-in-interest. Since respondents acquired their rights as owners of the property by virtue of a sale made to them by the Monsods prior to the bank's mortgage lien, respondents can not be dispossessed therefrom without due notice and hearing, through the simple expedient of an *ex-parte* possessory writ.

Parenthetically, in the case at bench, the records show that DBP already knew of the actual adverse possession of PNA, even while it claims that PNA's title is spurious. Also, it cannot be disputed that on March 8, 2004, DBP filed its Answer and, on March 12, 2004, it filed the instant *Ex-parte* Petition for Issuance of Writ of Possession. Evidently, it is for the purpose of racing to beat the proceedings in the ejectment case. Adopting the ruling of the Supreme Court in the *PNB* case, We, thus, rule in favor of PNA grounded, as follows:

X Under applicable laws and jurisprudence, they can not be ejected from the property by means of an ex-parte writ of possession.

The operative provision under Act No. 3135, as amended is Section 6, which states:

Sec. 6. Redemption.— In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of section four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act. (Italics ours)

Despite the evolutionary development of our procedural laws throughout the years, the pertinent rule in the Code of Civil Procedure²⁶ remains practically unchanged. Particularly, Rule 39, Section 33, second paragraph, which relates to the right of possession of a purchaser of property in an extrajudicial foreclosure sale:

Sec. 33. x x x

Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property at the time of levy. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor. (Italics ours)

Thus, in *Barican v. Intermediate Appellate Court*,³⁶ we held that the obligation of a court to issue an ex-parte writ of possession in favor of the purchaser in an extrajudicial foreclosure sale ceases to be ministerial once it appears that there is a third party in possession of the property who is claiming a right adverse to that of the debtor/mortgagor. The same principle was inversely applied in a more recent case,³⁷ 28 where we ruled that a writ of possession may be issued in an extrajudicial foreclosure of real estate

³⁶ 162 SCRA 358, 363 (1988).

³⁷ *PNB v. CA*, 275 SCRA 70(1997) citing *Gatchalian v. Arlegui*, 75 SCRA, 234(1977).

mortgage, only if the debtor is in possession and no third party had intervened. Although the factual nuances of this case may slightly differ from the aforesaid cases, the availing circumstances are undeniably similar – a party in possession of the foreclosed property is asserting a right adverse to the debtor/mortgagor and is a stranger to the foreclosure proceedings in which the ex-parte writ of possession was applied for.

It should be stressed that the foregoing doctrinal pronouncements are not without support in substantive law. Notably, the Civil Code protects the actual possessor of a property, to wit:

Art. 433. Actual possession under claim of ownership raises a disputable presumption of ownership. The true owner must resort to judicial process for the recovery of the property.

Under the aforequoted provision, one who claims to be the owner of a property possessed by another must bring the appropriate judicial action for its physical recovery. The term "judicial process" could mean no less than an ejectment suit or reivindicatory action, in which the ownership claims of the contending parties may be properly heard and adjudicated.

An ex-parte petition for issuance of a possessory writ under Section 7 of Act No. 3135 is not, strictly speaking, a "judicial process" as contemplated above. Even if the same may be considered a judicial proceeding for the enforcement of one's right of possession as purchaser in a foreclosure sale, it is not an ordinary suit filed in court, by which one party "sues another for the enforcement or protection of a right, or the prevention or redress of a wrong."³⁸

It should be emphasized that an ex-parte petition for issuance of a writ of possession is a non-litigious proceeding authorized in an extrajudicial foreclosure of mortgage pursuant to Act 3135, as amended. Unlike a judicial foreclosure of real estate mortgage under Rule 68 of the Rules of Court, any property brought within the ambit of the act is foreclosed by the filing of a petition, not with any court of justice, but with the office of the sheriff of the province where the sale is to be made.³⁹

As such, a third person in possession of an extrajudicially foreclosed realty, who claims a right superior to that of the original

³⁸ Sec. 3(a), Rule 1, Revised Rules of Court.

³⁹ *Supena v. de la Rosa*, 267 SCRA 1(1997) citing Sec. 4, Act 3135.

mortgagor, will have no opportunity to be heard on his claim in a proceeding of this nature. It stands to reason, therefore, that such third person may not be dispossessed on the strength of a mere ex-parte possessory writ, since to do so would be tantamount to his summary ejectment, in violation of the basic tenets of due process.

Besides, as earlier stressed, Article 433 of the Civil Code, cited above, requires nothing less than an action for ejectment to be brought even by the true owner. After all, the actual possessor of a property enjoys a legal presumption of just title in his favor⁴⁰, which must be overcome by the party claiming otherwise

xxx

Yet, instead of bringing an action in court for the ejectment of respondents, it chose to simply file an ex-parte petition for a writ of possession pursuant to its alleged right as purchaser in the extra-judicial foreclosure sale. We cannot sanction this procedural shortcut. To enforce the writ against an unwitting third party possessor, who took no part in the foreclosure proceedings, would be tantamount to the taking of real property without the benefit of proper judicial intervention.⁴¹

As regards DBP's contentions that: 1) the nature of the proceedings being ex-parte, the RTC should not have allowed PNA's intervention; and, 2) the RTC should be consistent in its previous ruling granting the instant ex-parte writ of possession pursuant to Section 7, of Act 3135, as amended by Act 4118, the Supreme Court had this to say regarding the matter:

✱ Consequently, it was not a ministerial duty of the trial court under Act No. 3135 to issue a writ of possession for the ouster of respondents from the lot subject of this instant case. The trial court was without authority to grant the ex-parte writ, since petitioner PNB's right of possession under said Act could be rightfully recognized only against the Monsods and the latter's successors-in-interest, but not against respondents who assert a right adverse to the Monsods. Hence, the trial court cannot be

⁴⁰ Art. 541 of the Civil Code. A possessor in the concept of an owner has in his favor the legal presumption that he possesses with a just title and cannot be obliged to show or prove it.

⁴¹ See note at 33, *supra*. Underscoring Ours.

X *precluded from correcting itself by refusing to enforce the writs it had previously issued. Its lack of authority to direct issuance of the writs against respondents assured that its earlier orders would never attain finality in the first place.⁴²*

Similarly, in this case, PNA, being in possession adverse to the title of the mortgagors, may not be evicted through the instant summary writ. In the same breath, RTC-Br.-92's Order denying the motion for demolition, invalidating an earlier order issued in favor of DBP is an exercise of the court's inherent prerogative to amend or rectify its own processes.

On DBP's assertion that mere allegations of PNA that it is a third party in actual possession of the property is not a valid ground for denying their motion for demolition, the same is also without merit. Thus:

X *In the same vein, respondents are not obliged to prove their ownership of the foreclosed lot in the ex-parte proceedings conducted below. The trial court has no jurisdiction to determine who between the parties is entitled to ownership and possession of the foreclosed lot.*

Likewise, registration of the lot in petitioner PNB's name does not automatically entitle the latter to possession thereof. As discussed earlier, petitioner PNB must resort to the appropriate judicial process for recovery of the property and cannot simply invoke its title in an ex-parte proceeding to justify the ouster of res.⁴³

⁴² Ibid, Underscoring Ours.

⁴³ See note at 34, *supra*. Underscoring Ours.

All told, there being no showing that the Respondent Judge had grossly abused his discretion or was whimsical or arbitrary in denying DBP's prayer to demolish the improvements on the subject properties, this petition must perforce fail.

It bears repeating that a writ of certiorari under Rule 65 of the *Revised Rules of Court* is a prerogative writ. It is never demandable as a matter of right or issued except in the exercise of judicial discretion.⁴⁴ It is also confined to questions of jurisdiction. Its function is to keep an inferior court within its jurisdiction and to relieve persons from arbitrary acts, meaning acts which the courts or judges have no power or authority in law to perform.⁴⁵

WHEREFORE, premises considered, the Petition is hereby **DISMISSED**. The questioned Orders of Br. 92, Regional Trial Court, Quezon City, dated November 30, 2004 and January 17, 2005 respectively, in LRC Case No. Q-17793(04) are hereby **AFFIRMED in toto**.

SO ORDERED.

ORIGINAL SIGNED
NORMANDIE B. PIZARRO
Associate Justice

⁴⁴ III Herrera, Remedial Law, 1999 Ed. p. 210; Nunal v. Commission on Audit, G.R. No. 78648, Jan 24, 1989, 189 SCRA 356.

⁴⁵ Id., p. 222, citing Carandang v. Cabatuando, L-25384, Oct. 26, 1973, 53 SCRA 383, 390; Phil. Rabbit v. Galauran, 118 SCRA 57; De Vera v. Pineda, 213 SCRA 434, 1992.

WE CONCUR:

ORIGINAL SIGNED
ELIEZER R. DE LOS SANTOS
Associate Justice

ORIGINAL SIGNED
AURORA SANTIAGO-LAGMAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ORIGINAL SIGNED
ELIEZER R. DE LOS SANTOS
Associate Justice
Chairman, Fifteenth Division

CERTIFIED TRUE COPY:

MARIA ISABEL M. PATTUGALAN-MADARANG
Division Clerk of Court

*Order*³ of Br. 92, Regional Trial Court of Quezon City (RTC-Br. 92, for brevity), denying their *Motion to Issue an Order of Demolition* against Private Respondents, Prime Neighborhood Association(PNA, for brevity)⁴.

Also challenged is the *Order*⁵ denying DBP's *Motion for Reconsideration*.⁶

The Facts:⁷

The instant Petition arose from an *Ex-Parte Petition for Issuance of a Writ of Possession*⁸ filed before the RTC-Br. 92 by DBP against Y-Electric Power Corporation(Y-Electric, for brevity), mortgagor and previous owner of the subject-parcel of land. Y-Electric obtained an industrial loan from DBP in the amount of four hundred eight thousand pesos(PhP408,000.00) to finance its electric power plant expansion projects in Atimonan and Gumaca, Quezon. This was secured by a Real Estate Mortgage executed by the spouses Victorino Yenco and Rosa Jaranilla-Yenko in favor of DBP, over the

¹ Under Rule 65 of the Rules of Court; Rollo, pp. 2-17.

² A government financial institution operating pursuant to the provisions of Executive Order No. 81(Revised Charter of the Development Bank of the Philippines) with office address at DBR Bldg., Sen. Gil Puyat and Makati Avenues, Makati City.

³ Issued by Hon. Judge Samuel H. Gaerlan, Br. 92, RTC Quezon City in LRC Case No. Q-17793-04, dated Nov. 30, 2004; See Annex A; Petition; Rollo, pp. 18-19.

⁴ A non-profit and non-stock corporation duly organized under Philippine law⁵ with office and business address at Luzon Ave, Brngy Culiati, Quezon City, Metro Manila.

⁵ See Annex B, dated Jan 17, 2005; Rollo, p. 20.

⁶ See Annex M, dated Jan 4, 2005; Rollo, pp 60-63.

⁷ As culled from the case records.

⁸ Filed on March 12, 2004, raffled to Br. 92, RTC, Quezon City and docketed as LRC Case No. Q-17793-04; See Annex C; Rollo, pp. 21-28.

parcels of land situated in Quezon City, covered by a certificate of title TCT No 342461(RT-101612).⁹

Failing to comply with the terms and conditions of the mortgage contract, the property was extra-judicially foreclosed by DBP. On March 4, 1977, it was sold at public auction to DBP, the highest bidder. A *Certificate of Sale*¹⁰ was issued by the office of the foreclosing sheriff in RTC Quezon City and was registered with the Quezon City Register of Deeds on May 25, 1977. The redemption period expired on May 25, 1978. On May 20, 2000, DBP consolidated its ownership with the Register of Deeds of Quezon City. The DBP, thereafter, subdivided the parcel of land, hence, new certificates of title (TCT Nos. 247959 and 247960) were issued, covering the subject-lots situated at Brgy. Culiati, Quezon City, with areas containing four thousand seven hundred eighty-six(4,786) sq. m. and five thousand two hundred fourteen(5,214) sq. m., respectively.

On May 28, 2004, the Br. 92-RTC granted the reliefs prayed for by the DBP pursuant to Section 7, of Act 3135, to wit:

WHEREFORE, the foregoing premises considered, the petition is hereby granted. Accordingly, let a writ of possession be issued in favor of the petitioner, ordering the Deputy Sheriff of this Court to place the petitioner in possession of the subject properties covered by TCT Nos. 247959 and 247960.

⁹ Described as TCT 36765 in the Certificate of Sale dated March 4, 1977, see Annex C; Rollo, p. 29.

¹⁰ See note at 9, *supra*.

SO ORDERED.¹¹

On July 29, 2004, Private Respondent Prime Neighborhood Association (PNA, for brevity),¹² claiming to represent third-persons in possession of the property in their own right and adverse to the mortgagor, intervened by filing an *Opposition to the Writ of Possession*.¹³ It contends that it became aware of the said writ through their President Oscar Estopin and several other members of PNA only on July 14, 2004, when the same was already being served to be implemented against them.¹⁴

PNA further contends that it should have been notified as the owner of the subject property pursuant to a *Deed of Sale* executed to them by Julian M. Tallano, the registered owner's predecessor-in-interest and court-appointed administrator.¹⁵ It disputes the ownership of Y-Electric as mortgagor and DBP as purchaser at auction, which arose from a spurious title. Thus, it claims that, not having been duly included as a party, the *ex-parte* issuance of a writ of possession in favor of DBP deprived it of due process.

PNA likewise faults DBP of forum-shopping because DBP's *ex-parte* motion was filed while the former's ejectment case against the latter was pending. According to PNA, it filed a case for

¹¹ See Annex D, Order; Rollo, pp. 30-31.

¹² Is a non-stock non-profit organized under Philippine Laws with business address at Brgy. Culiati, Quezon City.

¹³ With prayer for the issuance of a Temporary Restraining Order, see Annex E, Petition: Rollo, pp. 32-39.

¹⁴ See Opposition; Rollo p. 47.

¹⁵ Rollo, p. 84.

Unlawful Detainer against DBP and Luzonville Homeowners Association before Branch 21, Metropolitan Trial Court, Quezon City, docketed as Civil Case No. 32412.¹⁶ The unlawful detainer case and DBP's *ex-parte* motion have common parties, subject matter, and causes of action since both seek, as reliefs, the actual and physical possession of the subject properties premised on their claims of ownership. On April 6, 2004, PNA's ejectment complaint against DBP was dismissed. On May 11, 2004, PNA filed a notice of appeal from the dismissal of the ejectment case which is now pending at another branch of the Quezon City Regional Trial Court.

RTC-Br. 92 merely noted the filing of PNA's opposition/intervention and denied its prayer for the issuance of a restraining order. On August 7, 2004, PNA filed an *Application for the Issuance of a Restraining Order/Injunction*,¹⁷ reiterating its previous prayer, but the same was denied due course.¹⁸ Aggrieved, PNA filed a Petition for Certiorari¹⁹ with the Court of Appeals docketed as CA-GR SP No. 85870, with prayer for the issuance of a restraining order to prevent DPB from further dispossessing them and to annul the writ of possession issued in the Order dated May 28, 2005. To date, PNA's petition remains pending with this Court.²⁰

On the other hand, on September 17, 2004, DBP sought to implement the writ of possession by serving a notice to vacate the

¹⁶ Filed on February 26, 2004; See Annex I; Rollo, p. 47.

¹⁷ See Annex F, Petition; Rollo, pp. 40-43.

¹⁸ See Order dated Aug. 12, 2004, Annex H, Petition; Rollo p. 45.

¹⁹ Dated August 20, 2004 and docketed as CA-GR SP No. 85870, See Annex I, Petition; Rollo, pp. 46-52; also mentioned in the instant Petition; Rollo, p. 6.

²⁰ See Comments on the Petition dated April 26, 2005; Rollo, p. 77.

premises against PNA, the present occupant through Wilfredo Villanueva, Sheriff IV, of the Br. 92-RTC Quezon City. The notice to vacate was served in coordination with BSDOs Orlando Jumerez, Conrado Ramos of Barangay Culiati, and Purok Leader Melchor Tumalba of Purok 4-B. The occupants, however, refused to receive the same upon the instructions of Mr. Oscar Estofin, President of PNA. The sheriff had no alternative but to leave the notice to vacate at the residences of the respective occupants.²¹

For the writ's non-implementation, DBP filed the instant *Motion to Issue an Order of Demolition* against PNA, all persons occupying the lots covered by TCT No. 247960 and TCT No. 247960, (formerly TCT No. 342461{ RT-101612]) and all the improvements introduced thereon.²² On November 30, 2004, the RTC- Br. 92 denied the motion.²³ DBP sought for reconsideration of the said order but was denied.²⁴ Hence, this petition.

The Issue:

WHETHER OR NOT PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN HE(sic) DENIED DBP'S MOTION TO ISSUE AN ORDER OF DEMOLITION TO EFFECT THE IMPLEMENTATION OF THE WRIT OF POSSESSION.²⁵

²¹ See Sheriff's Return, Annex J, Petition, p. 54.

²² To Effect the Implementation of the Writ of Possession, See Annex L, Petition; Rollo, pp 56-59.

²³ See note at 2, *supra*.

²⁴ See notes at 5 and 6, *supra*.

²⁵ Petition; Rollo, p. 8.

This Court's Ruling:

DPB contends that the RTC should be consistent in its previous ruling granting the instant *ex-parte* writ of possession pursuant to Section 7, of Act 3135, as amended by Act 4118. The nature of the proceedings being *ex-parte*, the RTC should not have allowed PNA to intervene.²⁶ Moreover, DBP asserts, that as mortgagee, their *ex-parte* petition under Act 3135 entitles them to immediate possession of the property.²⁷

We are not convinced.

There is no question to the settled rule that it is ministerial upon the court to issue a writ of possession in favor of a purchaser in a foreclosure sale after the lapse of the redemption period, and after the title is consolidated in its favor. And, that it is ministerial upon the court to issue a writ of possession. The rationale for the mandate is to allow the purchaser to have possession of the foreclosed property without delay, such possession being founded on his right of ownership.²⁸

Likewise settled is the rule that an ordinary action to acquire possession in favor of the purchaser in an extra-judicial foreclosure of real property is not necessary. There is no law in this jurisdiction whereby the purchaser at a sheriff's sale of real property is obliged

²⁶ See note at 25, *supra*.

²⁷ See Petition; Rollo, p.10.

²⁸ Ong v. CA, 333 SCRA 189, 2000.

to bring a separate and independent suit for possession after the one-year period for redemption has expired and after he has obtained the sheriff's final certificate of sale. The basis of this right to possession is the purchaser's ownership of the property. The mere filing of an *ex parte* motion for the issuance of the writ of possession would suffice, and no bond is required.²⁹

The above disquisition, however, can only apply to cases wherein the properties are held by the judgment debtor-mortgagor and its privies against whom the mortgage-debt may be validly enforced including other illegal occupants having no rights whatsoever over the subject properties. But, said rule may not apply to affect the possession of third persons claiming adverse ownership against the judgment debtor and who were not made a party therein.³⁰

Thus, DBP's insistence that even a non-party to the suit may be bound by the writ of possession is misplaced. DBP cites *Angelus Neighborhood Association Inc. v. Hon. Edmund Acuna et al*,³¹ decided by this Court(CA), wherein DBP was able to obtain a writ of possession against the mortgagors. The case of *Biscocho v. Moreno*³² was also cited enumerating the exception to the general rule that non-party to a suit may be bound by the *writ*, such as squatters or illegal occupants, and privies of the judgment debtor.

²⁹ Arquiza v. CA, GR No. 160479, June 2005.

³⁰ PNB v. CA, 374 SCRA 22(2002).

³¹ CA GR No. 74144. Rollo p. 13.

³² 381 SCRA 430,(2002) Underscored Ours.

These cited cases do not support DBP's position.

Though the *Acuna* decision may have persuasive effect, nevertheless, it is not a case law it being merely a CA decision. The *Moreno* case, on the other hand, is an administrative case for grave misconduct involving sheriff Moreno for violating the aforestated general rule, wherein the Supreme Court held:

*It was plain error on the part of the respondent (sheriff Moreno) to implement the writ against the complainants who are neither the defendants nor persons who derived their property rights from the defendants in the civil case, such error translates into grave misconduct especially where the effect is to deny individuals of their fundamental rights to due process of law.*³³

Hence, the general rule, i.e. that execution may only be effected against the property of the judgment debtors who must necessarily be a party to the case remains applicable to the case at bench.³⁴ In this respect, We fully agree with PNA's stand that the case squarely applicable in resolving the issues to the fore is that of *PNB v. CA*.³⁵

In said case, Petitioner PNB submitted that since it is the registered owner of the property, it is entitled to a writ of possession as a matter of right. It insisted that it could rely on the title of the registered land which does not have any annotation of respondents'

³³ See note at 31, *supra*.

³⁴ *De Guzman v. Ong* 304 SCRA 206(1994).

³⁵ 374 SCRA 22(2002).