

## FIRST DIVISION

[ G.R. NO. 148830, April 13, 2005 ]

**NATIONAL HOUSING AUTHORITY, PETITIONER, VS. COURT OF APPEALS, BULACAN GARDEN CORPORATION AND MANILA SEEDLING BANK FOUNDATION, INC., RESPONDENTS.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is a petition for review<sup>[1]</sup> seeking to set aside the Decision<sup>[2]</sup> dated 30 March 2001 of the Court of Appeals ("appellate court") in CA-G.R. CV No. 48382, as well as its Resolution dated 25 June 2001 denying the motion for reconsideration. The appellate court reversed the Decision<sup>[3]</sup> of Branch 87 of the Regional Trial Court of Quezon City ("trial court") dated 8 March 1994 in Civil Case No. Q-53464. The trial court dismissed the complaint for injunction filed by Bulacan Garden Corporation ("BGC") against the National Housing Authority ("NHA"). BGC wanted to enjoin the NHA from demolishing BGC's facilities on a lot leased from Manila Seedling Bank Foundation, Inc. ("MSBF"). MSBF allegedly has usufructuary rights over the lot leased to BGC.

#### Antecedent Facts

On 24 October 1968, Proclamation No. 481 issued by then President Ferdinand Marcos set aside a 120-hectare portion of land in Quezon City owned by the NHA<sup>[4]</sup> as reserved property for the site of the National Government Center ("NGC"). On 19 September 1977, President Marcos issued Proclamation No. 1670, which removed a seven-hectare portion from the coverage of the NGC. Proclamation No. 1670 gave MSBF usufructuary rights over this segregated portion, as follows:

Pursuant to the powers vested in me by the Constitution and the laws of the Philippines, I, FERDINAND E. MARCOS, President of the Republic of the Philippines, do hereby exclude from the operation of Proclamation No. 481, dated October 24, 1968, which established the National Government Center Site, certain parcels of land embraced therein and reserving the same for the Manila Seedling Bank Foundation, Inc., for use in its operation and projects, subject to private rights if any there be, and **to future survey, under the administration of the Foundation.**

**This parcel of land**, which shall embrace 7 hectares, **shall be determined by the future survey** based on the technical descriptions found in Proclamation No. 481, and most particularly on the original survey of the area, dated July 1910 to June 1911, and on the subdivision survey dated April 19-25, 1968. (Emphasis added)

MSBF occupied the area granted by Proclamation No. 1670. Over the years, MSBF's occupancy exceeded the seven-hectare area subject to its usufructuary rights. By 1987, MSBF occupied approximately 16 hectares. By then the land occupied by MSBF was bounded by Epifanio de los Santos Avenue ("EDSA") to the west, Agham Road to the east, Quezon Avenue to the south and a creek to the north.

On 18 August 1987, MSBF leased a portion of the area it occupied to BGC and other stallholders. BGC leased the portion facing EDSA, which occupies 4,590 square meters of the 16-hectare area.

On 11 November 1987, President Corazon Aquino issued Memorandum Order No. 127 ("MO 127") which revoked the reserved status of "the 50 hectares, more or less, remaining out of the 120 hectares of the NHA property reserved as site of the National Government Center." MO 127 also authorized the NHA to commercialize the area and to sell it to the public.

On 15 August 1988, acting on the power granted under MO 127, the NHA gave BGC ten days to vacate its occupied area. Any structure left behind after the expiration of the ten-day period will be demolished by NHA.

BGC then filed a complaint for injunction on 21 April 1988 before the trial court. On 26 May 1988, BGC amended its complaint to include MSBF as its co-plaintiff.

### **The Trial Court's Ruling**

The trial court agreed with BGC and MSBF that Proclamation No. 1670 gave MSBF the right to conduct the survey, which would establish the seven-hectare area covered by MSBF's usufructuary rights. However, the trial court held that MSBF failed to act seasonably on this right to conduct the survey. The trial court ruled that the previous surveys conducted by MSBF covered 16 hectares, and were thus inappropriate to determine the seven-hectare area. The trial court concluded that to allow MSBF to determine the seven-hectare area now would be grossly unfair to the grantor of the usufruct.

On 8 March 1994, the trial court dismissed BGC's complaint for injunction. Thus:

Premises considered, the complaint praying to enjoin the National Housing Authority from carrying out the demolition of the plaintiff's structure, improvements and facilities in the premises in question is hereby DISMISSED, but the suggestion for the Court to rule that Memorandum Order 127 has repealed Proclamation No. 1670 is DENIED. No costs.

SO ORDERED.<sup>[5]</sup>

The NHA demolished BGC's facilities soon thereafter.

### **The Appellate Court's Ruling**

Not content with the trial court's ruling, BGC appealed the trial court's Decision to the appellate court. Initially, the appellate court agreed with the trial court that Proclamation No. 1670 granted MSBF the right to determine the location of the

seven-hectare area covered by its usufructuary rights. However, the appellate court ruled that MSBF did in fact assert this right by conducting two surveys and erecting its main structures in the area of its choice.

On 30 March 2001, the appellate court reversed the trial court's ruling. Thus:

WHEREFORE, premises considered, the Decision dated March 8, 1994 of the Regional Trial Court of Quezon City, Branch 87, is hereby REVERSED and SET ASIDE. The National Housing Authority is enjoined from demolishing the structures, facilities and improvements of the plaintiff-appellant Bulacan Garden Corporation at its leased premises located in Quezon City which premises were covered by Proclamation No. 1670, during the existence of the contract of lease it (Bulacan Garden) had entered with the plaintiff-appellant Manila Seedling Bank Foundation, Inc.

No costs.

SO ORDERED.<sup>[6]</sup>

The NHA filed a motion for reconsideration, which was denied by the appellate court on 25 June 2001.

Hence, this petition.

### **The Issues**

The following issues are considered by this Court for resolution:

WHETHER THE PETITION IS NOW MOOT BECAUSE OF THE DEMOLITION OF THE STRUCTURES OF BGC; and

WHETHER THE PREMISES LEASED BY BGC FROM MSBF IS WITHIN THE SEVEN-HECTARE AREA THAT PROCLAMATION NO. 1670 GRANTED TO MSBF BY WAY OF USUFRUCT.

### **The Ruling of the Court**

We remand this petition to the trial court for a joint survey to determine finally the metes and bounds of the seven-hectare area subject to MSBF's usufructuary rights.

#### ***Whether the Petition is Moot because of the Demolition of BGC's Facilities***

BGC claims that the issue is now moot due to NHA's demolition of BGC's facilities after the trial court dismissed BGC's complaint for injunction. BGC argues that there is nothing more to enjoin and that there are no longer any rights left for adjudication.

We disagree.

BGC may have lost interest in this case due to the demolition of its premises, but its **co-plaintiff**, MSBF, has not. The issue for resolution has a direct effect on MSBF's usufructuary rights. There is yet the central question of the exact location of the

seven-hectare area granted by Proclamation No. 1670 to MSBF. This issue is squarely raised in this petition. There is a need to settle this issue to forestall future disputes and to put this 20-year litigation to rest.

***On the Location of the Seven-Hectare Area Granted by  
Proclamation No. 1670 to MSBF as Usufructuary***

Rule 45 of the 1997 Rules of Civil Procedure limits the jurisdiction of this Court to the review of errors of law.<sup>[7]</sup> Absent any of the established grounds for exception,<sup>[8]</sup> this Court will not disturb findings of fact of lower courts. Though the matter raised in this petition is factual, it deserves resolution because the findings of the trial court and the appellate court conflict on several points.

The entire area bounded by Agham Road to the east, EDSA to the west, Quezon Avenue to the south and by a creek to the north measures approximately 16 hectares. Proclamation No. 1670 gave MSBF a usufruct over only a seven-hectare area. The BGC's leased portion is located along EDSA.

A usufruct may be constituted for a specified term and under such conditions as the parties may deem convenient subject to the legal provisions on usufruct.<sup>[9]</sup> A usufructuary may lease the object held in usufruct.<sup>[10]</sup> Thus, the NHA may not evict BGC if the 4,590 square meter portion MSBF leased to BGC is within the seven-hectare area held in usufruct by MSBF. The owner of the property must respect the lease entered into by the usufructuary so long as the usufruct exists.<sup>[11]</sup> However, the NHA has the right to evict BGC if BGC occupied a portion outside of the seven-hectare area covered by MSBF's usufructuary rights.

MSBF's survey shows that BGC's stall is within the seven-hectare area. On the other hand, NHA's survey shows otherwise. The entire controversy revolves on the question of whose land survey should prevail.

MSBF's survey plots the location of the seven-hectare portion by starting its measurement from Quezon Avenue going northward along EDSA up until the creek, which serves as the northern boundary of the land in question. Mr. Ben Malto ("Malto"), surveyor for MSBF, based his survey method on the fact that MSBF's main facilities are located within this area.

On the other hand, NHA's survey determines the seven-hectare portion by starting its measurement from Quezon Avenue going towards Agham Road. Mr. Rogelio Inobaya ("Inobaya"), surveyor for NHA, based his survey method on the fact that he saw MSBF's gate fronting Agham Road.

BGC presented the testimony of Mr. Lucito M. Bertol ("Bertol"), General Manager of MSBF. Bertol presented a map,<sup>[12]</sup> which detailed the area presently occupied by MSBF. The map had a yellow-shaded portion, which was supposed to indicate the seven-hectare area. It was clear from both the map and Bertol's testimony that MSBF knew that it had occupied an area in excess of the seven-hectare area granted by Proclamation No. 1670.<sup>[13]</sup> Upon cross-examination, Bertol admitted that he personally did not know the exact boundaries of the seven-hectare area.<sup>[14]</sup> Bertol also admitted that MSBF prepared the map without consulting NHA, the owner of