

FIRST DIVISION

[G.R. No. 96999, June 10, 1997]

CARLOS O. YSMAEL, PETITIONER, VS. COURT OF APPEALS (FORMER SECOND DIVISION); HOUSING AND LAND USE REGULATORY BOARD, OFFICE OF APPEALS, ADJUDICATION AND LEGAL AFFAIRS REPRESENTED BY ATTY. ABRAHAM N. VERMUDEZ, HOUSING AND LAND USE ARBITER; THE SHERIFF OF QUEZON CITY, THE REGISTER OF DEEDS OF QUEZON CITY AND ELISEO R. JAMLANG, RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court and prohibition with preliminary injunction assails the Decision of the Court of Appeals in CA-G.R. SP No. 22076 dated 31 August 1990 dismissing the petition for *certiorari* filed by petitioner and its Resolution dated 8 January 1991 denying petitioner's motion for reconsideration.

The antecedents of the case are as follows:

On 27 January 1965, petitioner sold two (2) parcels of subdivision lots (Lots No. 1 and 3, Block No. 1, Carmel Subdivision V-A, Tandang Sora District, Quezon City) to private respondent Eliseo R. Jamlang on installment basis. On 25 February 1974, Jamlang completed the payments for the aforementioned lots. However, petitioner failed to deliver the titles upon demand.

Records bare that before the aforesaid sale, on 10 July 1964 petitioner mortgaged one of the lots to Pilipinas Bank. Thereafter, on 9 September 1966 petitioner, likewise, mortgaged the other lot to China Banking Corporation and on 17 September 1974, said lot was again mortgaged to Equitable Banking Corporation.

Pilipinas Bank foreclosed the mortgage on the first lot on 22 July 1974 while the second lot was foreclosed by Equitable Banking Corporation on 29 August 1983.

Due to petitioner's failure to deliver the titles of the subject lots, Jamlang sought relief from the Housing and Land Use Regulatory Board (HLURB) by filing a complaint for specific performance with damages on 4 December 1986. The prayer of the complaint reads as follows:

WHEREFORE, it is respectfully prayed that judgment be rendered in favor of complainant and against the respondents:

1. to order respondents to deliver the titles of the two (2) parcels of land to complainant;

2. to pay to complainant moral damages in the sum of P100,000.00 plus exemplary damages in the amount within the discretion of the Honorable Commission;

3. to pay to complainant attorney's fees of P25,000.00 and costs.

OTHER AND FURTHER SANCTIONS AND RELIEFS, just and equitable, are herein prayed for.^[1]

Petitioner failed to file his answer within the reglementary period. He also failed to attend the scheduled hearings despite notification.

Consequently, private respondent Jamlang filed a motion to declare petitioner in default which was granted in an Order dated 29 May 1987.^[2] On 17 June 1987, the HLURB received evidence ex parte and on 19 August 1987, rendered its Decision, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered ordering respondents Carmel Corporation and Carlos Ysmael, within thirty (30) days from finality of this decision, to deliver to complainant the title of Lots No. 1 and 3, Block No. 1, Carmel Subdivision V-A, Tandang Sora District, Quezon City free from all liens and encumbrances, and to pay complainant the amount of P3,000.00 as administrative fine for violation of Section 25 in relation to Section 38 of P.D. 957.

Failure to comply with this decision will constrain this Board to forward the records of this case to the Task Force on Subdivision, Department of Justice for the filing of appropriate criminal action, against the responsible officers of respondent corporation.

IT IS SO ORDERED.^[3]

On 12 October 1987, upon motion of private respondent Jamlang and after the aforestated decision became final, the HLURB issued a writ of execution directing petitioner to comply with the following:

ELISEO R. JAMLANG,

COMPLAINANT,

-VERSUS- HLRB CASE NO. REM-011387-3068

CARMEL CORPORATION AND

CARLOS YSMAEL,

RESPONDENTS. WRIT OF EXECUTION

x - - - - - x

TO: THE EX-OFFICIO SHERIFF

(OR ANY OF HIS DEPUTIES)

REGIONAL TRIAL COURT

QUEZON CITY, METRO MANILA

GREETINGS:

WHEREAS, A DECISION WAS RENDERED BY THIS BOARD (FORMERLY HUMAN SETTLEMENTS REGULATORY COMMISSION) DATED 19 AUGUST 1987, A COPY OF WHICH IS HEREWITH ATTACHED;

WHEREAS, THE DISPOSITIVE PORTION THEREOF PROVIDES TO WIT:

“WHEREFORE, JUDGMENT IS HEREBY RENDERED ORDERING RESPONDENTS CARMEL CORPORATION AND CARLOS YSMAEL WITHIN THIRTY (30) DAYS FROM FINALITY OF THIS DECISION TO DELIVER TO COMPLAINANT THE TITLE OF LOTS NO. 1 AND 3, BLOCK NO. 1, CARMEL SUBDIVISION V-A TANDANG SORA DISTRICT, QUEZON CITY FREE FROM ALL LIENS AND ENCUMBRANCES, AND TO PAY COMPLAINANT THE AMOUNT OF P3,000.00 BY WAY OF ATTORNEY’S FEES AND THIS BOARD P3,000.00 AS ADMINISTRATIVE FINE FOR VIOLATION OF SECTION 25 IN RELATION TO SECTION 38 OF P.D. 957.”

WHEREAS, THE DECISION HAS ALREADY BECOME FINAL AND EXECUTORY;

WHEREAS, RESPONDENTS FAILED TO COMPLY WITH THE SAME;

WHEREFORE, WE COMMAND YOU PURSUANT TO P.D. NO. 1344 IMPLEMENTING P.D. NO. 957 IN CONNECTION WITH EXECUTIVE ORDER NO. 648 AND EXECUTIVE ORDER NO. 90 TO EXECUTE SAID JUDGMENT BY CAUSING RESPONDENTS CARMEL CORPORATION AND CARLOS YSMAEL OF 102 4TH STREET, NEW MANILA, QUEZON CITY, METRO MANILA TO DELIVER TO COMPLAINANT THE TITLE OF LOTS NO. 1 AND 3, BLOCK NO. 1 CARMEL SUBDIVISION V-A TANDANG SORA DISTRICT, QUEZON CITY FREE FROM ALL LIENS AND ENCUMBRANCES, AND TO PAY COMPLAINANT THE AMOUNT OF P3,000.00 BY WAY OF ATTORNEY’S FEES AND THIS BOARD P3,000.00 AS ADMINISTRATIVE FINE FOR VIOLATION OF SECTION 25 IN RELATION TO SECTION 38 OF P.D. 957.

WE COMMAND YOU FURTHER THAT, OF THE GOODS AND CHATTELS OF RESPONDENTS CARMEL CORPORATION AND CARLOS YSMAEL AT 102 4TH STREET, NEW MANILA, QUEZON CITY, METRO MANILA YOU CAUSE TO BE MADE THE SAID SUMS OF MONEY, TOGETHER WITH YOUR LAWFUL FEES FOR THE SERVICE OF THIS EXECUTION, ALL IN MONEY OF THE PHILIPPINES, AND THAT YOU TENDER THE AMOUNT REPRESENTING ATTORNEY’S FEES TO THE COMPLAINANT AND THE ADMINISTRATIVE FINE THIS BOARD, ASIDE FROM YOUR OWN FEES ON THIS EXECUTION AND TO RETURN THIS WRIT TO THIS BOARD WITH YOUR PROCEEDINGS INDORSED THEREON.

BUT IF SUFFICIENT PERSONAL PROPERTIES CANNOT BE FOUND WHEREOF TO SATISFY THIS EXECUTION AND LAWFUL FEES THEREON, THEN YOU ARE COMMANDED THAT OF THE LANDS AND BUILDINGS OF SAID RESPONDENTS, YOU CAUSE TO BE MADE THE SAID SUMS OF MONEY IN THE MANNER PROVIDED FOR BY LAW AND THE RULES OF COURT MAKE RETURN OF THIS WRIT WITHIN SIXTY (60) DAYS FROM THE DATE OF RECEIPT THEREOF.^[4]

On 31 October 1987, a copy of the writ was served on petitioner by the Sheriff of Quezon City. However, the same was returned unsatisfied due to the foreclosure of the subject lots by the mortgagee banks.

Meanwhile, the HLURB forwarded the records of the case at bar to the Task Force on Subdivision, Department of Justice, which, in turn, found a prima facie case against petitioner for violation of Section 25 of P.D. 957. Accordingly, Criminal Case No. 88-62349 was filed against him with the Regional Trial Court of Manila, Branch XVII.^[5]

Jamlang filed a motion for an alias writ of execution and prayed that he be reimbursed the current market value of the two lots subject of this case as an alternative relief.

The HLURB granted the aforestated motion and on 12 April 1989 issued an alias writ of execution which is substantially the same as the first writ but with the addition of an alternative command for petitioner to pay private respondent Jamlang the current market value of the lots subject of the judgment. We quote the pertinent parts of the said alias writ of execution as follows:

xxx.

WHEREFORE, WE COMMAND YOU PURSUANT TO P.D. NO. 1344 IMPLEMENTING P.D. 957 IN CONNECTION WITH EXECUTIVE ORDER NO. 648 AND EXECUTIVE ORDER NO. 90 TO EXECUTE SAID JUDGMENT BY CAUSING RESPONDENTS CARMEL CORPORATION AND CARLOS YSMAEL AT 102 4TH STREET, NEW MANILA, QUEZON CITY TO DELIVER TO COMPLAINANT THE TITLE OF LOTS NO. 1 AND 3, BLOCK NO. 1 CARMEL SUBDIVISION V-A, TANDANG SORA DISTRICT, QUEZON CITY FREE FROM ALL LIENS AND ENCUMBRANCES OR IN THE ALTERNATIVE TO PAY COMPLAINANT THE CURRENT MARKET VALUE OF THE SAID LOTS AND TO PAY COMPLAINANT THE AMOUNT OF P3,000.00 BY WAY OF ATTORNEY'S FEES AND THIS BOARD P3,000.00 AS ADMINISTRATIVE FINE FOR VIOLATION OF SECTION 25 IN RELATION TO SECTION 38 OF P. D. 957.

WE COMMAND YOU FURTHER THAT, OF THE GOODS AND CHATTELS OF RESPONDENT CARMEL CORPORATION AND CARLOS YSMAEL, YOU CAUSE TO BE MADE THE SAID SUMS OF MONEY, TOGETHER WITH YOUR LAWFUL FEES FOR THE SERVICE OF THIS EXECUTION, ALL IN THE MONEY OF THE PHILIPPINES, AND THAT YOU TENDER THE AMOUNT REPRESENTING THE ATTORNEY'S FEES TO THE COMPLAINANT AND THE ADMINISTRATIVE FINE TO THIS BOARD ASIDE FROM YOUR OWN FEES ON THIS EXECUTION AND TO RETURN THIS WRIT TO THIS BOARD WITH YOUR PROCEEDINGS INDORSED THEREON.

BUT IF SUFFICIENT PERSONAL PROPERTIES CANNOT BE FOUND WHEREOF TO SATISFY THIS EXECUTION AND LAWFUL FEES THEREON, THEN YOU ARE COMMANDED THAT OF THE LANDS AND BUILDINGS OF SAID RESPONDENTS, YOU CAUSE TO BE MADE THE SAID SUMS OF MONEY IN THE MANNER PROVIDED FOR BY LAW AND THE RULES OF COURT AND TO MAKE RETURN OF THIS WRIT WITHIN (60) DAYS FROM THE DATE OF RECEIPT THEREOF.^[6] (Underscoring ours.)

By virtue of the aforecited alias writ of execution, real property owned by petitioner located at 102 4th Street, New Manila, Quezon City, covered by TCT No. 29696 was levied on execution and sold at public auction on 2 June 1989. Jamlang was the highest bidder for P1,590,210.00 which amount corresponded to the current market value of the said property as appraised by a duly licensed appraiser authorized by the HLURB. A certificate of sale was duly issued in favor of Jamlang on the same date.^[7]

Petitioner failed to redeem the said property within the period allowed by law for redemption and as a result, a Sheriff's Final Deed of Sale was issued in favor of Jamlang.^[8]

On 27 June 1990, the Housing and Land Use Arbiter issued an order which reads, thus:

Finding complainant's Motion, dated 25 June 1990, to be well taken, the same is hereby GRANTED.

Accordingly, the Ex-Officio Sheriff or any of his Deputies, Quezon City, is hereby ordered to place the complainant herein, Eliseo R. Jamlang in actual possession of a parcel of land, covered by Transfer Certificate of Title No. 29696 of the Register of Deeds of Quezon City, including all improvements found therein and at the same time evict all tenants and adverse occupants deriving possession and rights from respondents Carlos Ysmael and Carmel Corporation perpetually thereafter and to likewise submit a report within fifteen (15) days from service hereof.

Should you not be allowed to enter the premises, then you are commanded to use reasonable force or destroy the means of entry, if warranted.

It is understood that legal expenses for the execution of this Order shall be for the account of complainant without prejudice to his rights of reimbursement from the respondents.

IT IS SO ORDERED.^[9]

Pursuant to the abovequoted order, on 28 June 1990 a Notice to Vacate was issued by Sheriff Eliseo Eje which reads:

You are hereby notified that pursuant to the ORDER issued by the Housing and Land Use Arbiter, Atty. ABRAHAM N. VERMUDEZ, Housing and Land Use Regulatory Board, Makati, Metro Manila, in the above-entitled case, copy which is hereto attached and SERVED UPON YOU, the