

## SECOND DIVISION

[ G.R. No. 174042, July 09, 2008 ]

**CITY OF NAGA, AS REPRESENTED BY MAYOR JESSE M. ROBREDO, PETITIONER, VS. HON. ELVI JOHN S. ASUNCION, AS PONENTE AND CHAIRMAN, HON. JUSTICES JOSE C. MENDOZA AND ARTURO G. TAYAG, AS MEMBERS, 12<sup>TH</sup> DIVISION, COURT OF APPEALS, HON. JUDGE FILEMON MONTENEGRO, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 26, NAGA CITY; ATTY. JESUS MAMPO, CLERK OF COURT, RTC, BRANCH 26, NAGA CITY, SHERIFF JORGE B. LOPEZ, RTC, BRANCH 26, NAGA CITY, THE HEIRS OF JOSE MARIANO AND HELEN S. MARIANO REPRESENTED BY DANILO DAVID S. MARIANO, MARY THERESE IRENE S. MARIANO, MA. CATALINA SOPHIA S. MARIANO, JOSE MARIO S. MARIANO, MA. LEONOR S. MARIANO, MACARIO S. MARIANO AND ERLINDA MARIANO-VILLANUEVA, RESPONDENTS.**

### DECISION

#### **QUISUMBING, J.:**

This petition for certiorari and prohibition under Rule 65 of the Rules of Court seeks the reversal of the Resolution<sup>[1]</sup> dated August 16, 2006 of the Court of Appeals in CA-G.R. SP No. 90547 which denied the Application for a Writ of Preliminary Prohibitory Injunction<sup>[2]</sup> filed by petitioner.

Challenged as well is the Order<sup>[3]</sup> dated August 17, 2006 of the Regional Trial Court (RTC) of Naga City, Branch 26 in Civil Case No. RTC 2005-0030 for unlawful detainer which granted respondents' Motion to Issue Writ of Execution<sup>[4]</sup> filed on August 16, 2005 and denied petitioner's Motion for Inhibition<sup>[5]</sup> filed on June 27, 2005. Concomitantly, the processes issued to enforce said Order are equally assailed, namely: the Writ of Execution Pending Appeal<sup>[6]</sup> dated August 22, 2006; the Notice to Vacate<sup>[7]</sup> dated August 23, 2006; and the Notice of Garnishment<sup>[8]</sup> dated August 23, 2006.

The facts as culled from the rollo of this petition and from the averments of the parties to this petition are as follows:

Macario A. Mariano and Jose A. Gimenez were the registered owners of a 229,301-square meter land covered by Transfer Certificate of Title (TCT) No. 671<sup>[9]</sup> located in Naga City. The land was subdivided into several lots and sold as part of City Heights Subdivision (CHS).

In a Letter<sup>[10]</sup> dated July 3, 1954, the officers of CHS offered to construct the Naga

City Hall on a two (2)-hectare lot within the premises of the subdivision. Said lot was to be designated as an open space for public purpose and donated to petitioner in accordance with the rules and regulations of the National Urban Planning Commission. By Resolution No. 75<sup>[11]</sup> dated July 12, 1954, the Municipal Board of Naga City (Municipal Board) asked CHS to increase the area of the land to four (4) hectares. Accordingly, CHS amended its offer to five (5) hectares.

On August 11, 1954, the Municipal Board adopted Resolution No. 89<sup>[12]</sup> accepting CHS' amended offer. Mariano and Gimenez thereafter delivered possession of the lots described as Blocks 25 and 26 to the City Government of Naga (city government). Eventually, the contract for the construction of the city hall was awarded by the Bureau of Public Works through public bidding to Francisco O. Sabaria, a local contractor. This prompted Mariano and Gimenez to demand the return of the parcels of land from petitioner. On assurance, however, of then Naga City Mayor Monico Imperial that petitioner will buy the lots instead, Mariano and Gimenez allowed the city government to continue in possession of the land.

On September 17, 1959, Mariano wrote a letter<sup>[13]</sup> to Mayor Imperial inquiring on the status of the latter's proposal for the city government to buy the lots instead. Then, through a note<sup>[14]</sup> dated May 14, 1968, Mariano directed Atty. Eusebio Lopez, Jr., CHS' General Manager, to disregard the proposed donation of lots and insist on Mayor Imperial's offer for the city government to purchase them.

On December 2, 1971, Macario A. Mariano died. Meanwhile, the city government continued in possession of the lots, and constructed the Naga City Hall on Block 25 and the public market on Block 26. It also conveyed to other government offices<sup>[15]</sup> portions of the land which at present, house the National Bureau of Investigation (NBI), Land Transportation Office, and Hall of Justice, among others.

In a Letter<sup>[16]</sup> dated September 3, 2003, Danilo D. Mariano, as administrator and representative of the heirs of Macario A. Mariano, demanded from petitioner the return of Blocks 25 and 26 to CHS. Alas, to no avail.

Thus, on February 12, 2004, respondent filed a Complaint<sup>[17]</sup> for unlawful detainer against petitioner before the Municipal Trial Court (MTC) of Naga City, Branch 1. In a Decision<sup>[18]</sup> dated February 14, 2005 of the MTC in Civil Case No. 12334, the MTC dismissed the case for lack of jurisdiction. It ruled that the city's claim of ownership over the lots posed an issue not cognizable in an unlawful detainer case.

On appeal, the RTC reversed the court *a quo* by Decision<sup>[19]</sup> dated June 20, 2005 in Civil Case No. RTC 2005-0030. It directed petitioner to surrender physical possession of the lots to respondents with forfeiture of all the improvements, and to pay P2,500,000.00 monthly as reasonable compensation for the use and occupation of the land; P587,159.60 as attorney's fees; and the costs of suit.

On June 27, 2005, petitioner filed a Motion for Inhibition against Presiding RTC Judge Filemon B. Montenegro for alleged bias and partiality. Then, petitioner moved for reconsideration/new trial of the June 20, 2005 Decision. On July 15, 2005, the RTC denied both motions.

On July 22, 2005, petitioner filed a Petition for Review with Very Urgent Motion/Application for Temporary Restraining Order and Writ of Preliminary Prohibitory Injunction<sup>[20]</sup> with the Court of Appeals. Respondents thereafter filed a Motion to Issue Writ of Execution.

On October 13, 2005, respondents manifested that they will not seek execution against the NBI, City Hall and Hall of Justice in case the writ of preliminary injunction is denied. On August 16, 2006, the appellate court issued the challenged Resolution, the decretal portion of which reads:

**WHEREFORE**, based on the foregoing premises, and in the absence of any immediate threat of grave and irreparable injury, petitioner's prayer for issuance of a writ of preliminary injunction is hereby DENIED. Petitioner had already filed its Memorandum. Hence, the private respondents are given fifteen (15) days from notice within which to submit their Memorandum.

**SO ORDERED.**<sup>[21]</sup>

On August 17, 2006, the RTC issued the assailed Order, thus:

WHEREFORE, let the corresponding Writ of Execution Pending Appeal be issued in this case immediately pursuant to Sec. 21, Rule 70. However, in view of the MANIFESTATION of plaintiffs dated October 13, 2005 that they will not take possession of the land and building where the City Hall, Hall of Justice and National Bureau of Investigation are located while this case is still pending before the Court of Appeals, this writ of execution shall be subject to the above-cited exception.

The Sangguniang [Panlungsod] of Naga City is hereby directed to immediately appropriate the necessary amount of [P]2,500,000.00 per month representing the unpaid rentals reckoned from November 30, 2003 up to the present from its UNAPPROPRIATED FUNDS to satisfy the claim of the plaintiffs, subject to the existing accounting and auditing rules and regulations.

SO ORDERED.<sup>[22]</sup>

Consequently, Clerk of Court Atty. Jesus Mampo issued a writ of execution pending appeal. Sheriff Jorge B. Lopez on the other hand, served a notice to vacate on respondents, and a notice of garnishment on Land Bank, Naga City Branch.

Hence, this petition for certiorari and prohibition.

On August 28, 2006, we issued a Temporary Restraining Order<sup>[23]</sup> to maintain the *status quo* pending resolution of the petition.

Petitioner raises the following issues for our consideration:

I.

WHETHER OR NOT PETITIONER CAN VALIDLY AVAIL OF THE EXTRAORDINARY WRITS OF CERTIORARI AND PROHIBITION IN ASSAILING THE CHALLENGED RESOLUTION, ORDERS AND NOTICES.

II.

WHETHER OR NOT PETITIONER IS GUILTY OF FORUM-SHOPPING.

III.

WHETHER OR NOT PUBLIC RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION IN ALLOWING THE IMMEDIATE EXECUTION OF ITS JUDGMENT NOTWITHSTANDING THE CATASTROPHIC CONSEQUENCES IT WILL BEAR ON THE DELIVERY OF BASIC GOVERNMENTAL SERVICES TO THE GOOD CITIZENS OF NAGA CITY; THE INCONCLUSIVENESS OF PRIVATE RESPONDENTS' TITLE AND CLAIM OF POSSESSION OVER THE SUBJECT PROPERTY; AND THE IMPUTATION OF BIAS AND PARTIALITY AGAINST PUBLIC RESPONDENT JUDGE.

IV.

WHETHER OR NOT PUBLIC RESPONDENTS JUDGE FILEMON B. MONTENEGRO, ATTY. JESUS MAMPO AND SHERIFF JORGE B. LOPEZ EXCEEDED THEIR AUTHORITY AND/OR COMMITTED GRAVE ABUSE OF DISCRETION IN TRYING TO EVICT PETITIONER AND VARIOUS DEPARTMENTS AND OFFICES THEREOF FROM THE SUBJECT PROPERTY.

V.

WHETHER OR NOT PUBLIC RESPONDENT JUDGE FILEMON B. MONTENEGRO EXCEEDED HIS JURISDICTION AND/OR COMMITTED GRAVE ABUSE OF DISCRETION IN DIRECTING PETITIONER TO PAY PRIVATE RESPONDENTS MONTHLY RENTALS OF ABOUT [P]81,500,000.00.

VI.

WHETHER OR NOT THE ORDER DIRECTING PETITIONER TO PAY PRIVATE RESPONDENT MONTHLY RENTALS [DISREGARDED] THE HONORABLE COURT'S ADMINISTRATIVE CIRCULAR NO. 10-2000 AND THE LAW AND THE JURISPRUDENCE CITED THEREIN.

VII.

WHETHER OR NOT PUBLIC RESPONDENTS JUDGE FILEMON B. MONTENEGRO, ATTY. JESUS MAMPO AND SHERIFF JORGE B. LOPEZ EXCEEDED THEIR AUTHORITY AND/OR COMMITTED GRAVE ABUSE OF DISCRETION IN CAUSING THE GARNISHMENT OF PETITIONER'S ACCOUNT WITH LAND BANK OF THE PHILIPPINES.

VIII.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING THE PETITIONER'S APPLICATION FOR WRIT OF PRELIMINARY PROHIBITORY INJUNCTION.<sup>[24]</sup>

The pertinent issues, in our view, are as follows: (1) whether petitioner availed of the proper remedy to contest the disputed order, resolution, and notices; (2) whether petitioner was guilty of forum-shopping in filing the instant petition pending the petition for review before the Court of Appeals; (3) whether RTC Judge Montenegro committed grave abuse of discretion in granting execution pending appeal; and (4) whether the Court of Appeals committed grave abuse of discretion in denying petitioner's application for a writ of preliminary injunction.

Petitioner City of Naga ascribes grave abuse of discretion on Judge Montenegro for allowing execution pending appeal and for refusing to inhibit himself from the proceedings. It contends that its claim of ownership over the lots behooved the RTC of jurisdiction to try the illegal detainer case. Granting *arguendo* that the RTC had jurisdiction and its judgment was immediately executory, petitioner insists that the circumstances in the case at bar warranted against it. For one, the people of Naga would be deprived of access to basic social services even before respondents' right to possess the land has been conclusively established. The City of Naga assails the validity of the order of execution issued by the court inasmuch as it excluded the NBI, City Hall and Hall of Justice from its coverage; ordered garnishment of government funds; and directed the *Sangguniang Panlungsod* to appropriate money in violation of the Supreme Court Administrative Circular No. 10-2000.<sup>[25]</sup> Petitioner likewise claims that Atty. Jesus Mampo and Sheriff Jorge B. Lopez acted with manifest abuse when they issued the writ of execution pending appeal, and served notice to vacate and notice of garnishment, respectively.

Finally, petitioner imputes grave abuse of discretion on the Court of Appeals for denying its application for a writ of preliminary injunction. The appellate tribunal struck down petitioner's application pending resolution by the RTC of respondent's motion to execute its June 20, 2005 Decision. Also, it found no merit in petitioner's claim that grave and irreparable injury will result to the City of Naga by the implementation of said decision. Nevertheless, it excused the NBI, Naga City Hall and Hall of Justice from execution.

For their part, respondents (Marianos) call for the dismissal of the instant petition on the ground of forum-shopping. They aver that the petition for review in the Court of Appeals and the present petition are but similar attempts to stop the immediate enforcement of the June 20, 2005 RTC Decision. They add that the court *a quo* merely acted in obedience to the provisions of Section 21<sup>[26]</sup> of Rule 70 of the Rules of Court when it ordered execution. Thus, the writ of execution, notice to vacate and notice of garnishment are also valid as incidents of the August 17, 2006 RTC Order. Respondents agree with the appellate court that there is no immediate threat of grave and irreparable injury to petitioner. In any case, the Marianos suggest that petitioner just seek reparation for damages should the appellate court reverse the RTC. Lastly, respondents allege that the court *a quo* correctly ruled on the merits despite its finding that the MTC erroneously dismissed the unlawful detainer case for lack of jurisdiction. The MTC based its decision on the affidavits and position papers submitted by the parties.