

TWELFTH DIVISION

[CA-G.R. CV NO. 68941, August 16, 2006]

**SANDIGAN REALTY DEVELOPMENT CORPORATION, PETITIONER-
APPELLEE, VS. REPUBLIC OF THE PHILIPPINES, ACCUSED-
APPELLANT.**

D E C I S I O N

MENDOZA, J.:

This is an appeal from the July 17, 2000 Order of the Regional Trial Court, Branch 83, Malolos, Bulacan, in Civil Case No. P-39-2000, granting the petition for reconstitution and issuance of second owner's copy of Transfer Certificate of Title (TCT) No. T-271867 of the Registry of Deeds of Bulacan with an area of 281 square meters allegedly registered in the name of petitioner, Sandigan Realty Corporation. The decretal portion of the subject order reads:

"WHEREFORE, the Register of Deeds of Bulacan is hereby directed to reconstitute in the files of its office the original copy of Transfer Certificate of Title No. T-271867 based on the certified correct copy of the Technical Description and survey plan marked as Exhibits 'K' and 'L' respectively.

The owner's duplicate copy of Transfer Certificate of Title No. T-271867 which was lost is hereby declared NULL and VOID and the Register of Deeds of Bulacan is hereby directed to issue a new owner's duplicate copy of the reconstituted title to the petitioner, after payment of the required fees.SO ORDERED."^[1]

It appears from the records that on January 18, 2000, the petitioner Sandigan Realty filed a petition for reconstitution of TCT No. T-271867 on the bases of Tax Declaration No. 96-11-31-04319, Technical Description of the property and a survey plan.

On January 26, 2000, the trial court issued an Order setting the case for initial hearing on May 22, 2000 at 8:30 o'clock in the morning. On said date, petitioner Sandigan Realty presented Norberto Esguerra as its witness.

Norberto Esguerra testified, among others, that he is the representative of petitioner Sandigan Realty as evidenced by a Secretary's Certificate (Exh. F); that the 281 square meter subject property, situated at Mojon, Malolos, Bulacan, and covered by a certificate of title under its name, is in its possession; that the original copy of the certificate of title was burned in the Office of the Registry of Deeds in March, 1987, as reflected in the Certification issued by the Register of Deeds to that effect (Exh. G); that the owner's duplicate copy in the possession of petitioner Sandigan Realty was also lost as attested by its President in an Affidavit of Loss (Exh. H); that the property was declared for taxation purposes as shown by Tax Declaration No. 96-

11031-04319 (Exh. 10); that the real estate taxes due on the property had been paid as evidenced by Official Receipt Nos. 511090 and 511080 (Exhs. J and J-1); that the documents supportive of the petition are the Technical Description (Exh. L) and the Survey Plan (Exh. K) duly prepared by a licensed Geodetic Engineer on the basis of the approved technical description of the property (TSN, May 22, 2000, pp. 2-5).

On July 27, 2001, the court a quo handed down the subject order in favor of petitioner Sandigan Realty. Not in conformity, the Office of the Solicitor General, representing the government, interposed this appeal praying for the setting aside of the subject order anchored on the following

ASSIGNMENT OF ERROR

I

THE COURT A QUO ERRED IN PROCEEDING WITH THE CASE DESPITE ITS FAILURE TO ACQUIRE JURISDICTION OVER THE CASE.

II

THE COURT A QUO ERRED IN FINDING THAT THERE IS SUFFICIENT EVIDENCE UPON WHICH THE PETITION FOR RECONSTITUTION OF TCT NO. T-271867 MAY BE BASED.

Elaborating, the Office of the Solicitor General (OSG) argues that the petitioner Sandigan Realty failed to strictly comply with Sections 12 and 13 of Republic Act (R.A.) No. 26 which, in effect, rendered the proceedings void. Sections 12 and 13 of R.A. No. 26 provide:

Sec. 12. Petitions for reconstitution from sources enumerated in Sections 29(c), 2(d), 3(e), and or 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's, mortgagee's or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location area and boundaries of the property; (d) the nature and description of the building or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such building or improvements; (e) the names and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have any interest in the property; (f) a detailed description of the encumbrances, if any, affecting the property have been presented for registration, or if there be any, the registration thereof has not been accomplished, as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support to the petition for reconstitution shall be attached thereto and filed with the same: Provided, That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Chief of the Land Registration (now

Commission of Land Registration) or with a certified copy of the description taken from a prior certificate of title covering the same property.

Sec. 13. The court shall cause a notice of the petition, filed under the preceding section, to be published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court. (Underscoring supplied)

In its petition, OSG pointed out that petitioner Sandigan Realty failed to mention the location area and boundaries of the property.^[2] Moreover, the notice of initial hearing as published in the Official Gazette failed to mention the location area and boundaries of the property (Notice of Initial Hearing, Record, p. 13; and the Official Gazettes – Exhibits E and E-1).

On January 25, 2002, Sandigan Realty submitted a Compliance wherein it was stated that its "counsel deems it wise to dispense with the filing of the Appellee's Brief."^[3]

After a careful scrutiny of the records of this case, We find Ourselves unable to affirm the subject order. It is Our considered view that the proceedings in the court a quo which resulted in the reconstitution of Certificate of Title No. T-271867 suffers from certain technical and substantial infirmities. Thus, We have no recourse but to nullify and set it aside.

Jurisdiction over the subject matter or nature of the action is conferred only by law. It cannot be (1) granted by the agreement of the parties; (2) acquired, waived, enlarged or diminished by any act or omission of the parties; or (3) conferred by the acquiescence of the courts.^[4]

Judicial reconstitution of title partakes of a land registration proceeding and is, perforce, a proceeding *in rem*. Reconstitution of a certificate of title, in the context of Republic Act No. 26, denotes the restoration in the original form and condition of a lost or destroyed instrument attesting to the title of a person to a piece of land.

The purpose of the reconstitution is to have, after observing the procedures prescribed by law, the title reproduced in exactly the same way it has been when the loss or destruction occurred.^[5]

The requirements in Section 12 (on the contents of a petition for reconstitution of title) and Section 13 (on the publication, posting and sending by mail thereof) of R.A. No. 26 are indeed *mandatory* and *jurisdictional* in nature and the non-observance thereof *fatally affects the whole proceedings in all its aspects*. This is the principle laid down in a long line of Supreme Court decisions.

In *Tahanan Development Corp. v. Court of Appeals*,^[6] the Supreme Court discussed the nature of the requirements mandated by R.A. 26 and again the consequence of failure to comply with them. Thus:

“Republic Act No. 26 entitled ‘An act providing a special procedure for the reconstitution of Torrens Certificates of Title lost or destroyed’ approved on September 25, 1946 *confers jurisdiction or authority to the Court of First Instance to hear and decide petitions for judicial reconstitution. The Act specifically provides the special requirements and mode of procedure that must be followed before the court can properly act, assume and acquire jurisdiction or authority over the petition and grant the reconstitution prayed for. These requirements and procedure are MANDATORY. xxx Any omission is fatal to the acquisition and exercise of jurisdiction by the trial court.*”^[7]

Similarly, in *Alabang Development Corporation v. Valenzuela*,^[8] the Supreme Court laid down what should be further included to be considered in compliance with the requirements:

“Upon examination of the subject petition for reconstitution, the Court noted that some essential data required in section 12 and section 13 of Republic Act 26 have been omitted such as the *nature and description of the buildings or improvements*, which do not belong to the owner of the land, and the *names and addresses of the owners of such buildings or improvements*, and the names and addresses of the *occupants or persons in possession* of the property, of the owners of the adjoining properties and of all persons who may have any interest in the property. Neither do these data appear in the Notice of Hearing, such that *no adjoining owner, occupant or possessor was ever served a copy thereof by registered mail or otherwise*. On these glaringly conspicuous omissions, the Court repeats its pronouncement in the Bernal case, to wit:

‘And since the above data do not appear in the Amended Petition, the same data do not also appear in the Notice of Hearing of the petition published in the Official Gazette. Patently, the provisions of Section 12 which enumerates mandatorily the contents of the Petition for Reconstitution and Section 13 which similarly require the contents of the Notice have not been complied with. In view of these multiple omissions which constitute non-compliance with the above-cited sections of the Act, We rule that said defects have not

invested the Court with the authority or jurisdiction to proceed with the case because the manner or mode of obtaining jurisdiction as prescribed by the statute which is mandatory has not been strictly followed, thereby rendering all proceedings utterly null and void. x x x.”^[9]

In *Republic v. Intermediate Appellate Court*,^[10] the notices of hearing were not posted on the main entrances of the provincial and municipal halls of the locality in which the lands are located. *Neither was there any showing that the adjacent owners or other interested parties were actually notified of the pending application.* Accordingly, the Supreme Court held that these omissions tainted the petition with a jurisdictional defect. Thus:

“It is not enough that there is publication in the Official Gazette. Publication of the notice in the Official Gazette is but one requirement. In addition, Republic Act No. 26 decrees that such a notice be posted "on the main entrance" of the corresponding provincial capitol and municipal building, as well as served actually upon the owners of adjacent lands. Failure to comply with such requisites will nullify the decree of reconstitution.

It shall be noted that a judicial reconstitution of title partakes of a land registration proceeding. Thus, notice of the proceedings must be done in the manner set forth by the letter of the law.”^[11]

Similarly, in the case of *Ortigas & Company Limited Partnership v. Velasco*,^[12] the controversy centered basically on the validity of the judgment of the trial court reconstituting TCT No. 124088 in favor of one Dolores V. Molina despite objections, among others, that there was *lack of actual notice to the adjacent owners*, and that the land therein described were already covered by other Torrens titles earlier issued and accorded judicial recognition by the Supreme Court. In detail, the High Court in this case resolved the issue in this manner:

“The respondent Court heard and decided the reconstitution case without having acquired jurisdiction of the nature of subject matter. Republic Act No. 26, entitled ‘*An Act Providing A Special Procedure For the Reconstitution of Torrens Certificate of Title Lost or Destroyed*,’ specifies the requisites to be met in order that the court may acquire competence to act on a petition for reconstitution of title and grant the appropriate remedy. These requisites, which this Court has repeatedly held to be mandatory and jurisdictional, are set in Section 13 of the statute. X x x.

x x x x x x x x x

As the law makes quite clear, it is essential in reconstitution cases that:

1. Notice of the petition be (a) published, at the expense of the petitioner, twice in successive issues of the Official Gazette, and (b) posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing;