

659 Phil. 335

FIRST DIVISION

[G.R. No. 184879, February 23, 2011]

**REPUBLIC OF THE PHILIPPINES (DEPARTMENT OF
TRANSPORTATION AND COMMUNICATIONS), PETITIONER, VS.
CITY OF MANDALUYONG, RESPONDENT.**

R E S O L U T I O N

PEREZ, J.:

The subject of this petition for review on *certiorari* is the writ of possession issued in favor of respondent City of Mandaluyong by the Regional Trial Court (RTC Branch 213), Branch 213, Mandaluyong City of real properties forming part of the EDSA Metro Rail Transit (MRT) III.

Petitioner Republic of the Philippines (Republic) is represented in this suit by the Department of Transportation and Communications (DOTC), which is the primary policy, planning, programming, regulating and administrative entity of the executive branch of the government in the promotion, development, and regulation of dependable and coordinated networks of transportation and communications systems, as well as in the fast, safe, efficient, and reliable postal, transportation and communications services; while respondent City Government of Mandaluyong is a local government unit tasked, among others, with meeting the priority needs and service requirements of its constituents in Mandaluyong City.^[1]

The material facts and events leading to this controversy are as follows:

On 8 August 1997, the DOTC entered into a Revised and Restated Agreement to Build, Lease and Transfer a Light Rail System for EDSA (BLT) with Metro Rail Transit Corporation Limited (Metro Rail), a foreign corporation. Under the BLT Agreement, Metro Rail shall be responsible for the design, construction, equipping, completion, testing, and commissioning of the Light Rail Transit System-LRTS Phase I (EDSA MRT III).^[2] The DOTC shall operate the same but ownership of the EDSA MRT III shall remain with Metro Rail during the Revenue and Construction periods. At the end of the Revenue Period,^[3] Metro Rail shall transfer to DOTC its title to and all of its rights and interests therein, in

exchange for US\$1.00.^[4]

On even date, Metro Rail then assigned all its rights and obligations under the BLT Agreement to Metro Rail Transit Corporation (MRTC), a domestic corporation.

In an agreement dated 15 July 2000, Metro Rail turned over the EDSA MRT III System to the DOTC for its operation.^[5]

In a joint resolution dated 5 April 2001, the City Assessors of Mandaluyong City, Quezon City, Makati City and Pasay City fixed the current and market value of EDSA MRT III at US\$655 Million or P32.75 Billion, and which will be divided proportionately according to distance traversed among these cities.^[6]

On 4 June 2001, the Office of the City Assessor of Mandaluyong issued Tax Declaration No. D-013-06267 in the name of MRTC, fixing the market value of the railways, train cars, three (3) stations and miscellaneous expenses at P5,974,365,000.00 and the assessed value at P4,779,492,000.00.^[7] Subsequently on 18 June 2001, the said Office of the City Assessor of Mandaluyong City demanded payment of real property taxes due under the aforesaid tax declaration.^[8]

The computation of real property tax of MRTC was pegged at P317,250,730.23 from the taxable year 2000 until August 2001.^[9] Two (2) years later or on August 2003, another demand was made on MRTC placing the deficiency real estate tax due to the City of Mandaluyong at P769,784,981.52.^[10]

Initially, a Notice of Delinquency dated 24 June 2005 was sent to MRTC wherein the assessed deficiency real property tax amounted to P12,843,928.79,^[11] however the City Treasurer of Mandaluyong issued another Notice of Delinquency on 7 September 2005 rectifying the 24 June 2005 notice by increasing the deficiency real property tax to P1,306,617,522.96.^[12]

On the same date, the City Treasurer issued and served a Warrant of Levy upon MRTC with the corresponding Notices of Levy upon the City Assessor and the Registrar of Deeds of Mandaluyong City.^[13]

On 5 December 2005, petitioner Republic filed a case for Declaration of Nullity of Real Property Tax Assessment and Warrant of Levy with a prayer for a Temporary Restraining Order (TRO) and Writ of Preliminary Injunction before the Regional Trial Court (RTC Branch 208), Branch 208, Mandaluyong City, docketed as Civil Case No. MC05-2882.

Petitioner Republic alleged that since Metro Rail had transferred to the DOTC the actual use, possession and operation of the EDSA MRT III System, Metro Rail or MRTC does not have actual or beneficial use and possession of the EDSA MRT III properties as to subject it to payment of real estate taxes. On the other hand, notwithstanding the transfer to DOTC of the actual use, possession and operation of the EDSA MRT III, petitioner Republic is not liable because local government units are legally proscribed from imposing taxes of any kind on it under Section 133(o) of Republic Act No. 7160. Likewise, under Section 234 of the same law, petitioner is exempted from payment of real property tax.^[14]

MRTC filed a complaint-in-intervention and sought to declare the nullity of the real property tax assessments.

The posting and publication of the Notice of Auction were made on 26 February 2006 and 5 March 2006.^[15]

On 22 March 2006, the RTC Branch 208, through Presiding Judge Esteban A. Tacla, Jr., denied both petitioner Republic's and MRTC's applications for TRO.^[16]

Consequently, on 24 March 2006, a public auction was conducted. For lack of bidders, the real properties were forfeited in favor of the City of Mandaluyong for the price of P1,483,700,100.18.^[17]

On 15 September 2006, the RTC Branch 208 issued an order denying petitioner and MRTC's application for issuance of a writ of preliminary injunction. A motion for reconsideration was filed but it was eventually denied on 9 March 2007. The issue on the validity of tax assessment however is pending before that court.

Petitioner Republic filed a petition for *certiorari* before the Court of Appeals challenging the denial of both the TRO and injunction by RTC Branch 208.

Meanwhile, respondent manifested before the Court of Appeals that due to the failure of MRTC to exercise the right of redemption, the City Treasurer of Mandaluyong executed a Final Deed of Sale in favor of the purchaser in the auction sale. Subsequently, Tax Declaration No. D-013-06267 in MRTC's name was cancelled and Tax Declaration No. D-013-10636 was issued in its place.^[18]

On 11 April 2008, respondent filed an *ex parte* petition praying for the issuance of a writ of possession before RTC Branch 213 of Mandaluyong and docketed as LRC Case No. MC-08-460.^[19] Petitioner Republic countered that the instant petition does not fall within the cases when a writ of possession may be issued. Moreover, petitioner argued that the

pendency of Civil Case No. MC05-2882 assailing the validity of the tax assessment and the subsequent auction sale of the properties pre-empts the issuance of said writ.^[20]

On 30 July 2008, the RTC Branch 213, through Judge Carlos A. Valenzuela, granted the petition for the issuance of a writ of possession.^[21] A subsequent motion for reconsideration filed by petitioner was denied for lack of merit.^[22]

While MRTC appealed said order to the Court of Appeals, petitioner Republic filed the instant case raising a question of law, *i.e.* the propriety of the issuance of a writ of possession. To support its main thesis that the RTC Branch 213 erred in issuing a writ of possession, petitioner claims that since EDSA MRT properties are beneficially owned by DOTC, it should not have been assessed for payment of real property taxes. Being a governmental entity, it is exempt from payment of real property tax under Section 234 of the Local Government Code. Therefore, no tax delinquency exist authorizing respondent to sell the subject properties through public auction. It then follows that respondent has no legal right to a writ of possession.^[23]

Petitioner Republic then asserts that the auction sale conducted by respondent cannot be likened to an extrajudicial foreclosure sale of a real estate mortgage under Act No. 3135 as a justification for the issuance of a writ of possession. Petitioner Republic reasons that the EDSA MRT properties were not put up as a collateral or security for a loan or indebtedness which was secured from respondent, nor was there any mortgage contract voluntarily entered into by petitioner or even by MRTC.^[24]

Finally, petitioner Republic adds that all requisites of *litis pendencia* exist in CA-G.R. SP No. 98334, which is a case for denial of injunction and TRO and in the present case, concerning the issuance of a writ of possession because there is identity of parties, rights asserted and reliefs prayer for. Respondent seeks to acquire possession over the EDSA MRT III properties on the basis of its tax assessments and auction sale, which petitioner Republic seeks to permanently enjoin respondent from enjoying when it initiated Civil Case No. MC05-2882. The pendency of CA-G.R. SP No. 98334 before the Court of Appeals, assailing the Orders denying respondent's prayer for a TRO and injunction should have pre-empted the issuance of the writ of possession by reason of *litis pendencia*.^[25]

In a Resolution dated 10 November 2008, this Court directed the parties to maintain the status *quo* and enjoined the enforcement and implementation of the Order and Writ of Possession dated 22 October 2008.^[26]

Respondent filed its comment refuting the allegations of petitioner. Respondent does not contest petitioner's immunity from local taxes. In fact, it has assessed MRTC, and not

petitioner, for real property tax. Respondent defends the RTC's issuance of a writ of possession after it was established that there was a valid foreclosure sale of MRTC's properties for non-payment of real property taxes and after the title had been consolidated in respondent's name. Respondent also avers that the subject public auction sale is an execution sale within the purview of Section 33, Rule 39 of the Rules of Court, thus a writ of possession was validly issued. Respondent subscribes to this Court's ruling in *Ong v. Court of Appeals*^[27] which clarified that there is no forum shopping where a petition for the issuance of a writ of possession is filed despite the pendency of an action for annulment of mortgage and foreclosure sale.^[28]

This case is, ultimately, between a local government's power to tax and the national government's privilege of tax exemption. That issue needs full hearing and deliberation, as indeed, the issue pends before the RTC, at first instance. Such trial of facts and issues must proceed. It should not be pre-empted by the present petition that deals with precisely the herein respondent's intended end result.

A writ of possession is a mere incident in the transfer of title.^[29] In the instant case, it stemmed from the exercise of alleged ownership by respondent over EDSA MRT III properties by virtue of a tax delinquency sale. The issue of whether the auction sale should be enjoined is still pending before the Court of Appeals. Pending determination, it is premature for respondent to have conducted the auction sale and caused the transfer of title over the real properties to its name. The denial by the RTC to issue an injunction or TRO does not automatically give respondent the liberty to proceed with the actions sought to be enjoined, especially so in this case where a *certiorari* petition assailing the denial is still being deliberated in the Court of Appeals. All the more it is premature for the RTC to issue a writ of possession where the ownership of the subject properties is derived from an auction sale, the validity of which is still being threshed out in the Court of Appeals. The RTC should have held in abeyance the issuance of a writ of possession. At this juncture, the writ issued is premature and has no force and effect.

WHEREFORE, the petition is **GRANTED**. The Decision and Order dated 30 July 2008 and 6 October 2008, respectively of RTC Branch 213 of Mandaluyong City in LRC Case No. M-08-460 are hereby **VACATED and SET ASIDE**. The status *quo* Order dated 10 November 2008 is **MAINTAINED**. The Court of Appeals is **ORDERED** to resolve CA-G.R. SP No. 98334 with deliberate dispatch.

SO ORDERED.

*Corona, C.J., (Chairperson), Velasco, Jr., Nachura, ** and *Del Castillo JJ.*, concur.

* Per Special Order No. 947, Associate Justice Antonio Eduardo B. Nachura is hereby designated as additional member in place of Associate Justice Teresita J. Leonardo-De Castro who is on official leave.

[1] Petition for Review on *Certiorari. Rollo*, pp. 4-5.

[2] LRTS Phase I means the rail transport system comprising about 16.9 line kilometers extending from Taft Avenue, Pasay City, to North Avenue, Quezon City, occupying a strip in the center of EDSA approximately 10.5 meters wide (approximately 12 meters wide at or around the Boni Avenue, Santolan and Buendia Stations), plus about 0.1 to 0.2 line kilometers extending from the North Avenue Station to the Depot, together with the Stations, 73 Light Rail Vehicles and all ancillary plant, equipment and facilities, as more particularly detailed in the specifications. See BLT Agreement. *Rollo*, p. 67.

[3] Revenue Period means the period commencing on the Completion Date and ending on the twenty-fifth anniversary thereof, unless earlier terminated pursuant hereto. *Id.* at 70.

[4] *Id.* at 100.

[5] *Id.* at 120-123.

[6] Resolution Adopting a Common Approach in Determining the Current and Fair Market Value of Rail Transport System (LRTS Phase I) Also Known as EDSA MRT III Extending from North Avenue, Quezon City, to Taft Avenue, Pasay City. *Id.* at 125.

[7] *Id.* at 126-127.

[8] *Id.* at 128.

[9] *Id.* at 129.

[10] *Id.* at 130.

[11] *Id.* at 133.

[12] *Id.* at 134.

[13] *Id.* at 354.

[14] Complaint in Civil Case No. MC05-2882. Id. at 143-146.

[15] Id. at 355-371.

[16] Id. at 710-720.

[17] Petition for Review on *Certiorari*. Id. at 13-14.

[18] Id. at 865.

[19] Id. at 851-855.

[20] Opposition. Id. at 871-872 and 875-876.

[21] Id. at 44-52.

[22] Id. at 53-54.

[23] Petition for Review on *Certiorari*. Id. at 21-25.

[24] Id. at 27.

[25] Id. at 31-32.

[26] Id. at 952.

[27] 388 Phil. 857 (2000).

[28] Comment. Id. at 965-970.

[29] See *Bon-Mar Realty and Sport Corporation v. Spouses De Guzman*, G.R. Nos. 182136-37, 29 August 2008, 563 SCRA 737, 751.

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