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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **February 11, 2015,** *which reads as follows:*

"G.R. No. 157441 - BENEDICTO B. ULEP, IN HIS CAPACITY AS ADMINISTRATOR OF THE LAND REGISTRATION AUTHORITY, AND JOVEN A. ALEGRE, IN HIS CAPACITY AS ACTING REGISTER OF DEEDS OF CALOOCAN CITY, Petitioners, v. HON. ADORACION G. ANGELES, PRESIDING JUDGE OF THE REGIONAL TRIAL COURT, BRANCH 121, CALOOCAN CITY, AND REGULO B. COLOMA, Respondents.

For our disposition is an "Urgent Petition for *Certiorari Ad Cautelam* with Prayer for Issuance of a Temporary Restraining Order and/or a Writ of Preliminary Injunction," questioning the Order dated January 16, 2003 of the Regional Trial Court (RTC), Branch 121, Caloocan City in Special Civil Action (SCA) No. C-721.

SCA No. C-721, in turn, involved an "Urgent Petition *Ex Abundanti Cautela*" for prohibition with damages and prayer for the issuance of a temporary restraining order and/or writ of preliminary prohibitory injunction filed by herein private respondent Regulo B. Coloma (then the Register of Deeds of Caloocan City) against petitioners Benedicto Ulep and Joven Alegre. In said petition, Coloma questioned the issuance by petitioner Ulep of Administrative Order No. 2002-97 which (a) directed Coloma to report for duty at the central office of the Land Registration Authority (LRA), and (b) designated petitioner Alegre as Acting Register of Deeds of Caloocan City in Coloma's stead.

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As grounds for allowance of his petition with the trial court, Coloma claimed that:

> (1) Petitioner Ulep as LRA Administrator had no authority to issue said administrative order since allegedly only the Secretary of Justice can order his transfer;
>
> (2) Petitioner Ulep acted without jurisdiction in directing his transfer without informing him of the basis therefor and affording him the opportunity to be heard;
>
> (3) The transfer was in effect a removal from an office over which he enjoyed security of tenure;
>
> (4) As a presidential appointee, he can only be removed from his office by the President; and
>
> (5) He is without any plain, speedy, adequate and sufficient remedy against the implementation of petitioner Ulep's transfer order.

Thus, Coloma prayed that the trial court: (a) issue *ex parte* a temporary restraining order (TRO) enjoining petitioner Ulep or any person acting on his behalf from executing said transfer order; (b) upon due notice and hearing, issue a writ of preliminary injunction for the same relief during the pendency of the case; and (c) upon hearing on the merits, issue an order making the injunction permanent, annulling Administrative Order No. 2002-97, and issue a writ of prohibition directing petitioners to desist from implementing said order.

In an Order dated December 23, 2002, the trial court denied the prayer for issuance of a TRO but set the prayer for issuance of a writ of preliminary injunction for hearing. During the hearings, the parties presented their respective witnesses and offered their documentary evidence. In compliance with the directive of the trial court, the parties likewise submitted their respective memoranda.

Opposing the issuance of a writ of preliminary injunction, petitioners essentially argued before the trial court that Administrative Order No. 2002-97 was validly and legally issued as there was a need to conduct a formal investigation on the complaint against Coloma for his issuance of

transfer certificates of title from OCT No. 994[1] registered on April 19, 1917 in duplication of previously issued regular titles. Coloma supposedly violated LRA Circular No. 97-11 and other issuances containing the LRA's position that the authentic title is OCT No. 994 issued on May 3, 1917. Petitioners likewise posited that the LRA Administrator as the chief executive officer of the LRA was vested by the Administrative Code with authority regarding appointments and discipline of LRA personnel. Moreover, Coloma's deliberate noncompliance with LRA directives, taken with the complaint and investigation against him, justified his temporary reassignment to the LRA central office.

Thereafter, the trial court, after finding Coloma's security of tenure to be under attack, issued the assailed Order dated January 16, 2003, which granted his prayer for a writ of preliminary injunction. Consequently, petitioners filed a motion for reconsideration of said order. In the interim, petitioners filed a motion to dismiss the main petition on the grounds that the trial court had no jurisdiction to entertain the case in view of alleged irregularities in the raffle of the application for an injunctive writ. While the motion for reconsideration and the motion to dismiss were pending resolution by the trial court, petitioners filed their answer *ad cautelam* in case the trial court would deny their motion to dismiss.

In an unusual turn of events, petitioners withdrew their motion for reconsideration of the January 16, 2003 Order, motion to dismiss and answer *ad cautelam* in apparent anticipation of their filing of the present petition directly with the Court on March 24, 2003. The withdrawal of petitioners' motion for reconsideration and their subsequent pleadings was granted by the trial court in an Order dated March 27, 2003.

This Court granted petitioners' prayer for the issuance of a TRO against the implementation of the trial court's January 16, 2003 Order. The parties filed their respective pleadings. In a Resolution dated June 9, 2014, the Court directed the parties to move in the premises by informing the Court within ten days from notice of any supervening event or subsequent developments that may be pertinent to the disposition of this case. As none of the parties advised the Court of any supervening fact or event material to the case at bar, the Court is constrained to assume that the factual situation of the parties remains unchanged.

From their submissions to this Court, the parties' contentions can be summed as follows:

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[1] OCT No. 994 covered the contentious property known as the Maysilo Estate.

The petitioners' arguments

According to petitioners, Coloma wrongfully implemented the Order dated January 8, 1998 of the RTC, Branch 120 of Caloocan City, which directed the issuance of transfer certificates of title emanating from OCT No. 994 allegedly registered on April 19, 1917. This was so since the Composite Fact-Finding Committee (created under Department of Justice Department Order No. 137) found that there is only one OCT No. 994 which was issued by the Rizal Register of Deeds on May 3, 1917. As purportedly shown by several correspondences, Coloma was aware of the official stand of the LRA on the controversy involving OCT No. 994. Moreover, Coloma allegedly violated LRA Circular No. 97-11, which states:

> **There had been many instances of orders emanating from the courts directing the Registers of Deeds to issue certificates of title inspite of the fact that the desired issuance of titles would result in the overlapping of previously titled property or that the issuance of title would be highly irregular.**
>
> While it may be true that the functions of the Register of Deeds are merely ministerial in nature and said officer is without authority in law to pass upon and determine the legality of an order duly issued by a court of justice and that the judicial order is entitled to due respect and compliance, yet this rule is not absolute for justice and fair play dictate **that where the Register of Deeds is fully aware of the fact that the implementation of the order would prejudice innocent third parties or do violence to the integrity of the torrens title then he is duty bound not to give due course to such order.** To do otherwise would make him an unwilling party to the consummation of an injustice or the impairment of the stability of the torrens title.
>
> In view thereof, a court order directing the Register of Deeds to issue a certificate of title which would result in the overlapping of such title with a previously titled property or where [the] issuance would be highly irregular should be denied registration. **But the Register of Deeds should forthwith inform the court concerned by way of a written manifestation stating the reason or reasons why he could not implement the order.**
>
> **If the court should insist that its order be implemented even after its attention had been called by the Register of Deeds to a possible overlapping of the title to be issued with an existing one or to any other irregularity in the title ordered to be issued, then the Register of Deeds is required under this circular to immediately elevate the matter <u>en consulta</u> to this Authority in accordance with**

Section 117 PD 1529, for possible referral to the Office of the Solicitor General for the filing of the appropriate judicial action.

Strict compliance herewith is enjoined.[2] (Emphases supplied.)

It was when petitioner Ulep became aware of the irregular and anomalous issuance of titles committed by Coloma that he allegedly issued Administrative Order No. 2002-97 directing the latter to report for duty at the central office. Contrary to Coloma's assertion of lack of due process, Coloma was properly furnished with copies of said administrative order. Thus, Coloma was able to write a letter to petitioner Ulep asking for reconsideration and recall of Administrative Order No. 2002-97. Since there was a possibility that Coloma would commit the same irregular and insubordinate acts in the future and thereby undermine the stability of the Torrens title system, it was imperative that Coloma be temporarily transferred to the central office pending investigation. Coloma's reporting for duty at the central office was not tantamount to a removal since there was no diminution of rank or salary. Considering these circumstances, the trial court committed grave abuse of discretion in granting Coloma's prayer for a writ of preliminary injunction since Administrative Order No. 2002-97 was valid and legal.

Petitioners likewise objected to the issuance of an injunctive writ by the trial court since no bond was filed by Coloma and there was no notice of the raffle of Coloma's application for injunctive relief contrary to Section 4(c), Rule 58 of the Rules of Court. Petitioners also averred that their counsel was not furnished a copy of the writ of preliminary injunction and that Coloma failed to exhaust administrative remedies before the LRA and the Civil Service Commission (CSC).

Petitioners prayed that the assailed order and writ of preliminary injunction be nullified and Coloma's petition before the trial court be dismissed.

The private respondent's counter-arguments

Coloma assails the instant petition on the following grounds:

(1) The petition should be dismissed for failure to comply with the mandatory rules of procedure on petitions for *certiorari*;

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2 *Rollo*, p. 58.

(2) Petitioners failed to exhaust all available remedies in the trial court, such as a motion for reconsideration;

(3) Petitioners are guilty of forum shopping since they filed the present petition before the grant by the trial court of their motion to withdraw their motion for reconsideration, motion to dismiss and answer *ad cautelam* which all raised the same issues as the current petition;

(4) The trial court correctly issued a writ of injunction as Coloma was entitled to have the implementation of Administrative Order No. 2002-97 enjoined since (i) Coloma's issuance of the questioned TCTs were valid and in accordance with decisions of this Court; and (ii) Ulep issued said order without authority and in violation of law and Coloma's right to security of tenure;

(5) Petitioners cannot belatedly raise the trial court's alleged failure to give them notice of raffle as a ground to set aside the January 16, 2003 Order;

(6) Coloma need not post a bond since the trial court in its discretion deemed it unnecessary to require a bond;

(7) Coloma need not exhaust all administrative remedies as the issues raised in his own petition are purely legal and Ulep's act of issuing Administrative Order No. 2002-97 was patently illegal;

(8) The lack of service of the writ of preliminary injunction on petitioners' counsel is not a ground to nullify the writ; and

(9) The TRO issued by the Court must be lifted for there is no basis for granting the same.

The Court's ruling

On matters of procedure, we agree with Coloma that the present petition is riddled with procedural missteps that would ordinarily have warranted its outright dismissal.

To begin with, petitioners have erroneously brought their petition directly to this Court in violation of the hierarchy of courts. As we held in *Pearson v. Intermediate Appellate Court*[3]:

> It has also been emphasized in a number of cases that while **this Court has concurrent jurisdiction with the Court of Appeals and the Regional Trial Courts (for writs enforceable within their respective regions), to issue writs of *mandamus*, prohibition or *certiorari*,** the litigants are well advised against taking a direct recourse to this Court. Instead, they should initially seek the proper relief from the lower courts. As a court of last resort, this Court should not be burdened with the task of dealing with causes in the first instance. Where the issuance of an extraordinary writ is concurrently within the competence of the CA or RTC, litigants must observe the principle of hierarchy of courts. **This Court's original jurisdiction to issue extraordinary writs should be exercised only where absolutely necessary, or where serious and important reasons therefor exist.** (Emphases supplied.)

Secondly, petitioners failed to demonstrate that "there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law" available to them which is a requisite for filing a petition for *certiorari* under Rule 65.[4] In the case at bar, petitioners filed in almost immediate succession their motion for reconsideration of the assailed RTC order, their motion to dismiss, and their answer *ad cautelam*, each pleading raising one or more issues that they likewise brought to this Court through the present petition. Thus, petitioners still had available remedies in the trial court and it was only by their own voluntary act of withdrawing them that such remedies had been lost to them. In any event, if petitioners felt that a petition for *certiorari* was their proper recourse, they could have filed the same with the Court of Appeals, which could have granted them injunctive relief if justified by the circumstances.

Another procedural difficulty posed herein is that the parties in their submissions with this Court ask us to resolve factual questions that have not been properly litigated since the proceedings at the trial court were

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[3] 356 Phil. 341, 355 (1998).

[4] Section 1, Rule 65 of the Rules of Court pertinently provides:

Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and **there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

suspended in the preliminary stages with the filing of the present petition. The assertion that Coloma's transfer was a removal from office and attended with bad faith and the counterstatement that it was merely a reassignment with no loss of seniority or diminution of rank and benefits are factual averments on which evidence must be presented before the trial court or the appropriate administrative agency. It is elementary that the Court is not a trier of facts.[5] Thus, we shall refrain from passing upon any of the factual issues raised by the parties.

In the labyrinth of opposing arguments presented before the Court, one issue is determinative of the entire case: Did Coloma exhaust his administrative remedies prior to the filing of his petition for prohibition with the trial court? Both parties implicitly agreed to submit this issue to us for resolution by extensively discussing the same in their pleadings.

While the Court does not look kindly on the procedural mistakes of petitioners, we cannot, however, turn a blind eye to the procedural wrongs committed by Coloma in his own petition for prohibition with prayer for injunctive relief before the trial court. We have previously held:

> Since injunction is the strong arm of equity, he who must apply for it must come with equity or with clean hands. This is so because among the maxims of equity are (1) he who seeks equity must do equity, and (2) he who comes into equity must come with clean hands. The latter is a frequently stated maxim which is also expressed in the principle that he who has done inequity shall not have equity. **It signifies that a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair** and dishonest, or fraudulent, or deceitful as to the controversy in issue.[6] (Emphasis supplied.)

Coloma's charge that petitioners did not exhaust their administrative remedies is not well-taken since he himself was guilty of the same. It would be highly iniquitous to dismiss the present petition on a procedural error that was first committed by Coloma.

Petitions for prohibition are covered by the same Rule 65 vehemently invoked by Coloma. Section 2 thereof provides:

> Section 2. *Petition for prohibition.* — When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and **there is no appeal or any other**

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5 *Casino Labor Association v. Court of Appeals*, 577 Phil. 202, 212 (2008).
6 *University of the Philippines v. Catungal, Jr.*, 338 Phil. 728, 743-744 (1997).

> **plain, speedy, and adequate remedy in the ordinary course of law**, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require. (Emphasis supplied.)

Therefore, Coloma must likewise demonstrate that there was no plain, speedy and adequate remedy open to him prior to seeking judicial relief.

To recall, Coloma's petition for prohibition aimed to assail and set aside Administrative Order No. 2002-97, which directed him to report for duty at the central office of the LRA. He asserted that it was an illegal "transfer" or a "removal" from office without due process of law. Petitioners, on the other hand, termed it a "temporary reassignment" in the interest of the service.

We do not need to rule on whether Administrative Order No. 2002-97 involved a transfer, a reassignment or a removal from office. What is indubitable is that the petition for prohibition involved a personnel action for which the law prescribes a remedy with the CSC.

The definition of personnel action is found in Section 26, Chapter 5, Title I-A, Book V of the Administrative Code of 1987, to wit:

> SECTION 26. *Personnel Actions*.—All appointments in the career service shall be made only according to merit and fitness, to be determined as far as practicable by competitive examinations. A non-eligible shall not be appointed to any position in the civil service whenever there is a civil service eligible actually available for and ready to accept appointment.
>
> **As used in this Title, any action denoting the movement or progress of personnel in the civil service shall be known as personnel action. Such action shall include appointment through certification, promotion, transfer, reinstatement, re-employment, detail, reassignment, demotion, and separation.** All personnel actions shall be in accordance with such rules, standards, and regulations as may be promulgated by the [Civil Service] Commission. (Emphasis and underscoring supplied.)

Following Coloma's own theory that Administrative Order No. 2002-97 is an invalid transfer, paragraph 3 of Section 26 quoted above further provides for his remedy:

> (3) *Transfer*. A transfer is a movement from one position to another which is of equivalent rank, level, or salary without break in service involving the issuance of an appointment.
>
> It shall not be considered disciplinary when made in the interest of public service, in which case, the employee concerned shall be informed of the reasons therefor. **If the employee believes that there is no justification for the transfer, he may appeal his case to the Commission.**
>
> The transfer may be from one department or agency to another or from one organizational unit to another in the same department or agency: *Provided, however*, That any movement from the non-career service to the career service shall not be considered a transfer. (Emphasis supplied.)

Indeed, it is settled in jurisprudence that the CSC has primary jurisdiction over personnel actions in the government service. In *Reyes, Jr. v. Belisario*,[7] we held that:

> [T]he CSC is the central personnel agency of the government whose powers extend to all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters. Constitutionally, the CSC has the power and authority to administer and enforce the constitutional and statutory provisions on the merit system; promulgate policies, standards, and guidelines for the civil service; subject to certain exceptions, approve all appointments, whether original or promotional, to positions in the civil service; hear and decide administrative disciplinary cases instituted directly with it; and perform such other functions that properly belong to a central personnel agency. **Pursuant to these powers, the CSC has the authority to determine the validity of the appointments and movements of civil service personnel**. (Emphasis supplied.)

For this reason, the Court has consistently ruled that parties questioning personnel actions that may be appealed to the CSC must exhaust administrative remedies prior to filing an action in court.[8] We have explained the rationale for the doctrine of exhaustion of administrative remedies in this wise:

> The observance of the mandate regarding exhaustion of administrative remedies is a sound practice and policy which should not be ignored. The doctrine insures an orderly procedure and withholds judicial interference until the administrative process would have been allowed to duly run its course. Even comity dictates that unless the

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7 612 Phil. 936, 958 (2009).

8 *See*, for example, *Teotico v. Agda, Sr.*, 274 Phil. 960, 980 (1991) and *Carale v. Abarintos*, 336 Phil. 126, 135 (1997).

> available administrative remedies have been resorted to and appropriate authorities given an opportunity to act and correct the errors committed in the administrative forum, judicial recourse must be held to be inappropriate and impermissible.[9]

In the present case, there was no attempt at all on the part of Coloma to appeal with the CSC. According to Coloma, he need not exhaust his administrative remedies and may resort to judicial action at the first instance since (a) the question in dispute is purely legal, and (b) the controverted act is patently illegal which are among the jurisprudentially recognized exceptions to the said rule.[10]

We do not agree.

Contrary to Coloma's belief, the parties have presented mixed questions of law and fact in discussing their contentions. It must be established by proof whether or not bad faith attended the issuance of Administrative Order No. 2002-97. Oft repeated is the rule that bad faith cannot be presumed and he who alleges bad faith has the onus of proving it.[11] The defense that Coloma's transfer involved neither a loss of seniority or rank nor a diminution of benefits is likewise a question of fact.

Neither can we accept the proposition that the assailed transfer/reassignment order is patently illegal. As pointed out by petitioners, under Section 29, Chapter 6, Book IV of the Administrative Code, provides that:

> ***Chapter 6*** *- Powers and Duties of Heads of Bureaus or Offices*
>
> **SECTION 29.** *Powers and Duties in General.*—The head of bureau or office shall be its chief executive officer. He shall exercise overall authority in matters within the jurisdiction of the bureau, office or agency, including those relating to its operations, and enforce all laws and regulations pertaining to it.

Section 26, Chapter 5, Title I-A, Book V of the same statute as previously discussed allows a transfer of personnel when done in the interest of the service. In the case at bar, whether Coloma's transfer or reassignment was not done in the interest of the service is not easily discernible from the records. We are mindful, too, of the Court's final and executory resolution

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9 *Garcia v. Court of Appeals,* 411 Phil. 25, 43 (2001).

10 Private respondent relied on *Palma-Fernandez v. De la Paz* (243 Phil. 904, 911 [1988]) where the Court held: "The doctrine on exhaustion of administrative remedies does not preclude petitioner from seeking judicial relief. This rule is not a hard and fast one but admits of exceptions among which are that (1) the question in dispute is 'purely a legal one' and (2) the controverted act is 'patently illegal.'"

11 *Uy v. Commission on Audit,* 385 Phil. 324, 336 (2000).

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in *Manotok Realty, Inc. v. CLT Realty Development Corporation*,[12] which upheld the LRA's position that OCT No. 994 issued on May 3, 1917 is the authentic title covering the Maysilo Estate.

Premises considered, SCA No. C-721 must be dismissed for Coloma's failure to exhaust administrative remedies. As jurisprudence dictates, the non-observance of the doctrine of exhaustion of administrative remedies results in lack of cause of action, which is one of the grounds in the Rules of Court justifying the dismissal of the complaint.[13]

From the foregoing disquisition, we find it no longer necessary to rule on the other issues raised by the parties that involve factual questions or have been rendered moot by the dismissal of SCA No. C-721.

WHEREFORE, the petition is **GRANTED**. The Order dated January 16, 2003 and the Writ of Preliminary Injunction issued in Special Civil Action No. C-721 are **SET ASIDE**. Special Civil Action No. C-721 is **DISMISSED**.

It appearing that the copy of the move in the premises Resolution dated June 9, 2014 sent to Chavez Laureta and Associates, counsel for private respondent, at 7th Flr., Kalaw-Ledesma Bldg., 117 Gamboa St., Legaspi Village, Makati, was returned to this Court on September 23, 2014 undelivered with postal notation 'RTS-moved out,' the Court resolved to **CONSIDER** said resolution as **SERVED**.

SO ORDERED."

Very truly yours,

LIBRADA C. BUENA
Deputy Division Clerk of Court

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The Solicitor General (x)
Makati City

The Hon. Presiding Judge
Regional Trial Court, Br. 121
1400 Caloocan City
(Special Civil Action No. C-721)

- over -

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12 565 Phil. 59 (2007).

13 *Pangasinan State University v. Court of Appeals*, 553 Phil. 87, 93 (2007).

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