



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **January 17, 2023** which reads as follows:

**“G.R. No. 206824\* (Algo Towers Development Corporation, petitioner vs. Development Bank of the Philippines, Philippine Investment Two [SPV-AMC], Inc. [PI TWO], Ana Martha Maria L. Moreno representing Northpaw Incorporated, Ping Yao Bin,<sup>1</sup> Inc., Odoacer Corporation, Qwertyfull<sup>2</sup> Business Corp., One Colimchun Corporation, Metroworks Ideas, Inc., Kin-Jian Ro Corporation, Siapore Micro, Inc., Highgloss Inc., Kenzo Hansei Corporation, Metacountry Inc., Rameobin Corporation, Ptolyme Dimensions, Inc., Whip-Kool Joint, Inc., Bayboom & Brothers, Inc., Business Xmari Incorporated, Augustomiro, Inc., Metrohub Corporation, Reichmann Corporation and Arkangel Aguila Enterprises, Inc., respondents).** – This resolves the Petition for Review on *Certiorari*<sup>3</sup> under Rule 45 of the Rules of Court (*Rules*) assailing the Resolutions dated November 23, 2012<sup>4</sup> and April 19, 2013<sup>5</sup> of the Court of Appeals (*CA*) in CA-G.R. SP No. 126170. The CA dismissed the Petition for *Certiorari* filed by Algo Towers Development Corporation (*petitioner*) against the Orders of the Regional Trial Court of Manila, Branch 4 (*RTC*) dated May 19, 2011,<sup>6</sup> November 3, 2011<sup>7</sup> and July 6, 2012<sup>8</sup> which denied its plea to quash the Writ of Possession issued on April 13, 2011 in LRC REC No. 317<sup>9</sup> for being an improper remedy.<sup>10</sup>

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\* Part of the Supreme Court Decongestion Project.

<sup>1</sup> Also referred to as Pingyao Bin in some parts of the *rollo*.

<sup>2</sup> Also Referred to as “Qwertyfull” and “Qwetyful” in some parts of the *rollo* (*rollo*, pp. 99, 291, 232).

<sup>3</sup> Id. at 20-83.

<sup>4</sup> Id. at 93-95; penned by Associate Justice Isaias P. Dicedican and concurred in by Associate Justices Rodil V. Zalameda (now a Member of the Court) and Nina G. Antonio-Valenzuela.

<sup>5</sup> Id. at 230-231; penned by Associate Justice Isaias P. Dicedican and concurred in by Associate Justices Rodil V. Zalameda (now a Member of the Court) and Nina G. Antonio-Valenzuela.

<sup>6</sup> Id. at 99; penned by Acting Presiding Judge Joselito dj. Vibandor.

<sup>7</sup> Not attached; see CA Resolution dated November 23, 2022; id. at 93-95.

<sup>8</sup> Not attached; see CA Resolution dated November 23, 2022; id.

<sup>9</sup> Entitled “*Development Bank of the Philippines, substituted by Northpaw Inc., Pingyao Bin, Inc., Odoacer Corp., Qwetyful Business Corp., et al. v. Algo Towers Development Corporation*,” id. at 99.

<sup>10</sup> Id. at 93-94.

### *Antecedents*

Petitioner obtained a series of loans from Development Bank of the Philippines (*DBP*) from 1975 to 1980. As security for the loans, petitioner mortgaged a parcel of land located in Manila (*subject property*) covered by Transfer Certificate of Title (*TCT*) No. 116895,<sup>11</sup> in favor of DBP. When petitioner failed to pay, DBP initiated extrajudicial foreclosure proceedings wherein it emerged as the highest bidder during the public auction. A Certificate of Sale was issued on November 15, 1984 which was registered on December 22, 1984.<sup>12</sup>

Petitioner's right of redemption expired on December 13, 1985.<sup>13</sup> Five days later, petitioner filed a Complaint for Annulment of Deeds of Sale or Transfer with Damages<sup>14</sup> docketed as Civil Case No. 12520 (*nullification case*) before the RTC of Makati City, Branch 147 (*RTC Makati*).<sup>15</sup>

Meanwhile, DBP consolidated its title over the subject property on May 21, 1992. Hence, TCT No. 116895 was cancelled and a new title - TCT No. 204813 - was issued in DBP's favor.<sup>16</sup>

On May 3, 1993, DBP filed an *ex-parte* Petition for Issuance of Writ of Possession before the RTC Manila docketed as LRC REC No. 137 (*writ of possession case*). On July 28, 1993, the RTC Manila issued an Order<sup>17</sup> granting the motion. Petitioner appealed this order, but it was dismissed by the CA in CA-G.R. CV No. 46472.<sup>18</sup> The case eventually reached this Court (G.R. No. 132050), but the same was similarly dismissed through a Resolution<sup>19</sup> dated April 14, 1998 which became final and executory on August 12, 1998.<sup>20</sup>

On November 9, 2005, the RTC Makati dismissed the nullification case, which both petitioner and DBP appealed to the CA, docketed as CA-G.R. CV No. 92706. On March 13, 2012, the CA affirmed with modification

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<sup>11</sup> Id. at 766.

<sup>12</sup> Id. at 356-357.

<sup>13</sup> Id. at 375.

<sup>14</sup> Id. at 414-423.

<sup>15</sup> Id. at 27.

<sup>16</sup> Id. at 376-377.

<sup>17</sup> Id. at 88.

<sup>18</sup> Id. at 356-366.

<sup>19</sup> Id. at 369-370.

<sup>20</sup> Id. at 368; Entry of Judgment.

the RTC Makati.<sup>21</sup> Petitioner filed a Motion for Reconsideration, but it was likewise denied in the CA Resolution dated May 8, 2013.<sup>22</sup>

It appears that while both CA-G.R. CV No. 92706 and the writ of possession case remained pending, respondents North Paw Incorporated, Ping Yao Bin, Inc., Odoacer Corporation, Qwertyfull Business Corp., One Colimchun Corporation, Metroworks Ideads,<sup>23</sup> Inc., Kin-Jian Ro Corp., Siapore Micro, Inc., Highgloss Inc., Kenzo Hansei Corporation, Metacountry Inc., Rameobin Corporation, Pytolyme Dimensions, Inc.,<sup>24</sup> Whip-Kool Joint, Inc., Bayboom & Brothers, Inc., Business Xmari Inc., Augustomiro, Inc., Metrohub Corporation, Reichmann Corporation and Arkangel Aguila Enterprises, Inc. (collectively, “*private respondents*”), filed separate Motions for Substitution before the CA and the RTC Manila.<sup>25</sup> Private respondents averred in their motions that after the RTC Makati rendered its decision in the nullification case but before the case was elevated to the CA, DBP sold the subject property to Philippine Investment Two (SPV-AMC), Inc. (*PI Two*), which led to the issuance of a new title (TCT No. 289328)<sup>26</sup> on October 16, 2009 in favor of the latter. On November 23, 2009, private respondents purchased the subject property from PI Two.<sup>27</sup>

On January 11, 2011, the CA issued a Resolution<sup>28</sup> granting the Motion for Substitution. This prompted petitioner to file a Motion to Re-Open and to Recall or Annul Substitution based on two grounds: (1) that DBP violated Section 12<sup>29</sup> of Republic Act No. 9182,<sup>30</sup> or the Special Purpose Vehicle Act of 2002 (*SPV Act*); and (2) that PI Two violated the Stay Order issued by the RTC of Makati City, Branch 149 in the petition for rehabilitation case filed by

<sup>21</sup> Id. at 373-385.

<sup>22</sup> Id. at 388-391.

<sup>23</sup> Also referred to as “Ideas” in some parts of the *rollo*; id. at 404.

<sup>24</sup> Also referred to as “Ptolyme” Dimensions Inc. in some parts of the *rollo*; id. at 20.

<sup>25</sup> Id. at 300-307, 404.

<sup>26</sup> Id. at 731-735.

<sup>27</sup> Id. at 301.

<sup>28</sup> Id. at 401.

<sup>29</sup> Republic Act No. 9182, Sec. 12 reads:

Section 12. *Notice and manner of Transfer of Assets.* –

(a) No transfer of NPLs [Non-Performing Loads] to an SPV shall take effect unless the FI [Financial Institution] concerned shall give prior notice, pursuant to the Rules of Court, thereof to the borrowers of the NPLs and all persons holding prior encumbrances upon the assets mortgaged or pledged. Such notice shall be in writing to the borrower by registered mail at their last known address on file with the FI. The borrower and the FI shall be given a period of at most ninety (90) days upon receipt of notice, pursuant to the Rules of Court, to restructure or renegotiate the loan under such terms and conditions as may be agreed upon by the borrower and the FIs concerned.

(b) The transfer of NPAs [Non-Performing Assets] from an FI to an SPV shall be subject to prior certification of eligibility as NPA by the appropriate regulatory authority having jurisdiction over its operations, which shall issue its ruling within forty-five (45) days from the date of application by the FI for eligibility.

(c) After the sale or transfer of the NPLs, the transferring FI shall inform the borrower in writing at the last known address of the fact of the sale or transfer of the NPLs.

<sup>30</sup> Entitled “AN ACT GRANTING TAX EXEMPTIONS AND FEE PRIVILEGES TO SPECIAL PURPOSE VEHICLES WHICH ACQUIRE OR INVEST IN NON-PERFORMING ASSETS, SETTING THE REGULATORY FRAMEWORK THEREFOR, AND FOR OTHER PURPOSES.” Approved: December 23, 2002.

Metropolitan Bank and Trust Company (SP Case No. M-6683). Petitioner argued that under the SPV Act, DBP should have given prior written notice to borrowers of non-performing loans (*NPLs*) before disposing the subject property.<sup>31</sup> The CA denied the motion in its Resolution<sup>32</sup> dated September 13, 2011.

On the other hand, the RTC Manila in the writ of possession case, also granted the motion for substitution on March 31, 2011.<sup>33</sup> Private respondents thus filed an Omnibus Motion (for Issuance of Alias Writ of Possession and to Appoint Special Sheriff), claiming that the original writ of possession was not served.<sup>34</sup> The RTC Manila granted the motion in its March 31, 2011 Order,<sup>35</sup> and issued the corresponding writ of possession on April 13, 2011.<sup>36</sup>

Petitioner then filed a Motion to Quash the Writ of Possession on April 18, 2011. However, the RTC Manila denied the same in its Order dated May 19, 2011.<sup>37</sup> The RTC Manila noted that the motion to quash had been rendered moot and academic when the subject property was turned over to private respondents on April 25, 2011 by virtue of the writ of possession. Petitioner later filed an amended motion to reconsider and a supplemental motion to reconsider, but the RTC Manila denied both motions in separate Orders issued on November 3, 2011 and July 6, 2012.<sup>38</sup>

Undeterred, petitioner questioned the aforesaid orders denying its motion to quash the writ of possession through a Petition for *Certiorari* under Rule 65 filed before the CA.

### ***The CA Ruling***

In its Resolution<sup>39</sup> dated November 23, 2012, the CA dismissed the petition for being an improper remedy. It held that petitioner should have filed an appeal in accordance with Sec. 14<sup>40</sup> of Act No. 496<sup>41</sup> or the Land

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<sup>31</sup> Id. at 405.

<sup>32</sup> Id. at 404-407.

<sup>33</sup> Id. at 316; *see* Order dated March 31, 2011.

<sup>34</sup> Id. at 326.

<sup>35</sup> Id. at 316.

<sup>36</sup> Id. at 398-400.

<sup>37</sup> Id. at 99.

<sup>38</sup> Id. at 326.

<sup>39</sup> Id. at 93-95.

<sup>40</sup> Act No. 496, Sec. 14 provides:

Section 14. Every order, decision, and decree of the Court of Land Registration shall be subject to appeal to the Court of First Instance of the city or province where the land lies, concerning which the order, decision, or decree appealed from was made; but the proceeding shall not pass to the Court of First Instance for review upon the appeal until final determination by the Court of Land Registration of the whole proceeding in which the order, decision, or decree appealed from was made. The appeal shall be made and entered within thirty days from the date of the final order, decision, or decree, and the party appealing shall, at the time of entering his [or her] appeal, file in the Court of First Instance copies of all

Registration Act, in relation to Sec. 8<sup>42</sup> of Act No. 3135<sup>43</sup> (*Act 3135*), as amended by Act No. 4118.<sup>44</sup>

Petitioner filed a Motion for Reconsideration<sup>45</sup> which the CA also denied in its Resolution<sup>46</sup> dated April 19, 2013.

Hence, the present Petition for Review on *Certiorari*.

### Issues

Petitioner questions the validity of the substitution in the absence of any final adjudication of ownership of the subject property in favor of private respondents. Petitioner posits that the CA made it appear in its January 11, 2011 Resolution that private respondents are already the joint owners of the subject property. Further, the RTC Manila gravely erred in granting the writ of possession despite the lapse of more than 10 years since the Decision of the Court in G.R. No. 132050 had become final and executory.<sup>47</sup>

Petitioner also maintains that its right of redemption had not yet expired because the filing of its complaint for nullification of foreclosure proceedings suspended the running of the period for right of redemption pursuant to the ruling in *Ong Chua v. Carr*<sup>48</sup> (*Ong Chua*). It likewise faults the CA for not

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material papers in the case certified by the clerk. Appearances and answers shall be filed in the Court of First Instance within thirty days after the appeal is entered, unless for good cause further time is allowed, and upon motion of either party the case shall be advanced for speedy hearing, and shall be tried by the Court of First Instance as other actions are tried in that court. All competent testimony which has been taken in writing before the Court of Land Registration may be used on the trial in the Court of First Instance. Questions of law arising in the Court of First Instance on trial of the appeal may be taken to the Supreme Court for revisions by any party aggrieved, in the same manner as in ordinary actions in the Court of First Instance.

<sup>41</sup> Entitled "AN ACT TO PROVIDE FOR THE ADJUDICATION AND REGISTRATION OF TITLES TO LANDS IN THE PHILIPPINE ISLANDS." Approved: November 6, 1902.

<sup>42</sup> Act No. 3135, Sec. 8 reads:

Section 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specifying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his [or her] favor of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal. (As amended by Act No. 4118)

<sup>43</sup> Entitled "AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES." Approved: March 6, 1924.

<sup>44</sup> Entitled "AN ACT TO AMEND ACT NUMBERED THIRTY-ONE HUNDRED AND THIRTY-FIVE, ENTITLED 'AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL-ESTATE MORTGAGES.'" Approved: December 7, 1933.

<sup>45</sup> See CA Resolution; *rollo*, p. 230.

<sup>46</sup> *Id.* at 230-231.

<sup>47</sup> *Id.* at 43.

<sup>48</sup> 53 Phil. 975, 983 (1929).

declaring the sale by DBP of the subject land to PI Two as null and void for violating the 60% Filipino equity rule.<sup>49</sup>

On its part, DBP filed a Manifestation and Motion (in Lieu of Comment),<sup>50</sup> praying that it should be dropped as a party-respondent considering that: (1) it no longer participated in the proceedings after the substitution of the parties; and (2) it has no more interest in the case.<sup>51</sup>

In its Comment/Opposition with Motion to be Dropped as Party Respondent,<sup>52</sup> PI Two stressed that it was not a party to the proceedings in LRC REC No. 137, and was only unilaterally included by petitioner as a party in its petition for *certiorari* before the CA. At any rate, PI Two agrees with the CA that petitioner should have filed an appeal instead of a petition for *certiorari*. PI Two also maintains that DBP's rights and interests over the subject property, including its right to demand possession of the subject property under Act 3135, had been transferred to private respondents.<sup>53</sup>

In their Comment,<sup>54</sup> private respondents further assert that petitioner once again questions the propriety of issuing a writ of possession which had already been settled by the Court in G.R. No. 132050. They emphasize that the issue herein should pertain only to the November 23, 2012 and April 19, 2013 Resolutions of the CA which sustained the denial of petitioner's motion to quash/cancel the writ of possession. They likewise refute that petitioner's argument involving revival of the writ of possession after more than 10 years is untenable because the present case is not an ordinary civil action. As regards the validity of the sale of the subject property by DBP, the same is the subject of a separate proceeding<sup>55</sup> initiated by petitioner docketed as Civil Case No. 11-015 and pending before the RTC of Makati City, Branch 150.<sup>56</sup>

## ISSUES

The issues for resolution herein are:

- (1) Whether a petition for *certiorari* is an improper remedy against the RTC Manila's Orders denying petitioner's motion to cancel the issuance of the writ of possession;

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<sup>49</sup> *Rollo*, p. 44.

<sup>50</sup> *Id.* at 295-299.

<sup>51</sup> *Id.* at 296-297.

<sup>52</sup> *Id.* at 442-454.

<sup>53</sup> *Id.* at 442-448.

<sup>54</sup> *Id.* at 318-355.

<sup>55</sup> Entitled "*Algo Towers Development Corporation v. Development Bank of the Philippines*;" *id.* at 414-423.

<sup>56</sup> *Rollo*, pp. 335-343.

- (2) Whether an action for revival of judgment under Sec. 6, Rule 39 of the Rules of Court is proper instead of an ordinary motion for issuance of a writ possession in view of the lapse of more than 10 years since the Decision of the Court in G.R. No. 132050 had become final and executory; and
- (3) Whether the CA erred in not declaring the sale of the subject property as null and void pursuant to Sec. 12 of the SPV Law and for noncompliance with the 60% Filipino equity requirement for juridical entities in acquiring real property.

### **The Court's Ruling**

We deny the petition.

*An appeal is improper in assailing an order granting a writ of possession after consolidation of the ownership of the foreclosed property; certiorari does not avail in this case*

It is notable that the writ of possession subject of the present controversy was issued under Sec. 8 of Act 3135, and after the right of redemption had expired without petitioner redeeming the subject property and after DBP had consolidated its title. These factual incidents are material in determining the appropriate remedy that should have been taken by petitioner after the RTC Manila issued the writ of possession.

It is settled rule that a buyer in a foreclosure sale becomes the absolute owner of the property purchased if no redemption is made within one year from registration of the sale.<sup>57</sup> Being the absolute owner, he or she is entitled to all the rights of ownership over the property including the right of possession.<sup>58</sup> In such case, the bond required in Sec. 7<sup>59</sup> of Act 3135 is no

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<sup>57</sup> *Spouses Teves v. Integrated Credit & Corporate Services, Co.*, 829 Phil. 290, 302 (2018); *Bascara v. Sheriff Javier*, 760 Phil. 766, 775 (2015), citing *China Banking Corporation v. Spouses Lozada*, 579 Phil. 454, 472-473 (2008).

<sup>58</sup> *Spouses Reyes v. Spouses Chung*, 818 Phil. 225, 236 (2017).

<sup>59</sup> Act No. 3135, as amended by Act No. 4118, reads:

Section 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if

longer necessary. Upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court.<sup>60</sup>

Sec. 8 of Act 3135,<sup>61</sup> however, allows the debtor to ask for the cancellation or setting aside of the writ of possession in specified instances:

SEC. 8. The debtor may, **in the proceedings in which possession was requested**, but not later than thirty days after the purchaser was given possession, **petition that the sale be set aside and the writ of possession canceled**, specifying the damages suffered by him, **because the mortgage was not violated or the sale was not made in accordance with the provisions hereof**, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act Numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favor of all or part of the bond furnished by the person who obtained possession. **Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six**; but the order of possession shall continue in effect during the pendency of the appeal. (Emphasis supplied)

We have held that where the writ of possession has already been issued, the proper remedy is an appeal and not a petition for *certiorari*.<sup>62</sup> As Sec. 14 of Act No. 496 explicitly provides, every order, decision, and decree of the Court of Land Registration may be reviewed by the Supreme Court in the same manner as an order, decision, decree, or judgment of a Court of First Instance might be reviewed.

However, the Court clarified in *Bank of the Philippine Islands v. Spouses Co.*,<sup>63</sup> that the appeal provided under Sec. 8 of Act 3135 is not available after the right of redemption has expired and the purchaser has consolidated its title. We explained at length:

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the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

<sup>60</sup> *Philippine National Bank v. Sanao Marketing Corporation*, 503 Phil. 260, 272 (2005).

<sup>61</sup> As amended by Act. No. 4118.

<sup>62</sup> *The Parents-Teachers Association of St. Mathew Christian Academy v. Metropolitan Bank and Trust Co.*, 627 Phil. 669, 687 (2010), citing *Metropolitan Bank and Trust Company v. Tan*, 578 Phil. 464, 474 (2008) and *Government Service Insurance System v. Court of Appeals*, 251 Phil. 222 (1989).

<sup>63</sup> 772 Phil. 291 (2018).



We find no merit in BPI's argument that the order of the RTC Br. 196 granting a writ of possession is merely interlocutory from which no appeal may be taken.

In *Mallari v. Banco Filipino Savings and Mortgage Bank*, we ruled that it is the ministerial duty of the trial court to issue a writ of possession in favor of the purchaser who has already consolidated its title. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem the property, the writ of possession becomes a matter of right. Its issuance to a purchaser in an extrajudicial foreclosure sale is merely a ministerial function. The trial court *has no discretion* on this matter. Hence, any assertion of discretion in connection with such issuance is misplaced, and a petition for *certiorari* is not a proper remedy. **The order for the issuance of a writ of possession being final, it is a proper subject for appeal.**

**We clarify, however, that this remedy of appeal is different from the remedy provided in Section 8 of Act No. 3135, as amended by Act No. 4118.** An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as grave abuse of discretion. Errors of judgment are correctible by appeal while those of jurisdiction are reviewable by *certiorari*. In *680 Home Appliances, Inc. v. Court of Appeals*, we explained that **Act No. 3135 finds no application after the lapse of the redemption period, and the remedy of a debtor to contest the possession of the property is a separate action, and not the appeal provided for in Section 8 of the Act.** We explained:

In a number of cases, the Court declared that Section 8 of Act No. 3135 is the available remedy to set aside a writ of possession, without considering whether the writ involved in each of these cases was issued during or after the lapse of the redemption period. Upon reevaluation, we find it necessary to make a distinction and clarify when the remedy under Section 8 of Act No. 3135 may be availed of.

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Act No. 3135 governs only the manner of the sale and redemption of the mortgaged real property in an extrajudicial foreclosure; proceedings beyond these, *i.e.*, upon the lapse of the redemption period and the consolidation of the purchaser's title, are no longer within its scope x x x

As pointed out, the remedy provided under Section 8 of Act No. 3135 to the debtor becomes available only after the purchaser acquires *actual* possession of the property. This is required because until then the debtor, as the owner of the property, does not lose his right to possess.

However, **upon the lapse of the redemption period without the debtor exercising his right of redemption and the purchaser consolidates his title, it becomes**

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**unnecessary to require the purchaser to assume actual possession thereof before the debtor may contest it.** Possession of the land becomes an absolute right of the purchaser, as this is merely an incident of his ownership. In fact, the issuance of the writ of possession at this point becomes ministerial for the court. **The debtor contesting the purchaser's possession may no longer avail of the remedy under Section 8 of Act No. 3135, but should pursue a separate action e.g., action for recovery of ownership, for annulment of mortgage and/or annulment of foreclosure.** FSAMI's consolidation of ownership therefore makes the remedy under Section 8 of Act No. 3135 unavailable for 680 Home. 680 Home cannot assail the writ of possession by filing a petition in LRC No. M-5444.<sup>64</sup> (Emphasis supplied, citations omitted)

Furthermore, in *Cabuhat v. Development Bank of the Philippines*,<sup>65</sup> (*Cabuhat*). It was stressed that a petition under Sec. 8 of Act 3135 is limited to two exclusive grounds: (1) that the mortgage was not violated, meaning the debtor has not missed any payments of his loan; or (2) that the foreclosure sale did not comply with the procedural requirements under Secs. 1 to 4 of Act 3135. These grounds also implicitly admit the existence and validity of the mortgage.<sup>66</sup>

Clearly, when the period of redemption has expired without the debtor redeeming the mortgaged property, and after the purchaser has consolidated its title, possession becomes an absolute right on the part of the purchaser. As such, the debtor may no longer avail of an appeal under Sec. 8 of Act 3135. The appropriate recourse is to file a separate action such as an action for recovery of ownership or annulment of the mortgage or foreclosure proceedings.

Given that the redemption period for petitioner to redeem the subject property had already lapsed, and title over the property had already been consolidated in favor of DBP, petitioner may no longer avail of the remedy provided in Sec. 8 of Act 3135. In this sense, the CA had inaccurately reasoned that the petition for *certiorari* was improper on the basis that the correct remedy should be an appeal.

Nonetheless, the CA was still correct in dismissing the *certiorari* petition in view of an available remedy – a separate action for annulment of mortgage and/or annulment of foreclosure, or even an action for recovery of ownership. It bears emphasis that the extraordinary remedy of *certiorari* is

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<sup>64</sup> Id. at 306-308.

<sup>65</sup> 788 Phil. 596 (2016).

<sup>66</sup> Id. at 605.

not an alternative to an available remedy in the ordinary course of law. This rule is based on Sec. 1, Rule 65 of the Rules, which requires that there must be no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.

At any rate, even if the petition for *certiorari* may be allowed on the ground that the independent action of annulment of mortgage/ foreclosure or recovery of ownership is not a plain, speedy, and adequate remedy that may provide immediate relief to the petitioner, still, the same will not prosper. A writ of *certiorari* may only lie on the ground of lack of jurisdiction or grave abuse of discretion. It is settled rule that grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>67</sup> In here, petitioner failed to prove that the trial court acted with grave abuse of discretion in denying its motion to quash the writ of possession. Petitioner failed to dispute the trial court's observation that the subject property has already been turned over to respondents, or rebut the fact that the titles have already been consolidated.

Based on the records, petitioner had already availed of several actions apart from appealing the denial of its motion to cancel or set aside the writ of possession. Notably, such courses of action had resulted in multiple suits that unnecessarily clogged the courts' dockets.

Petitioner however insists that the writ of possession should not have been issued based on *Ong Chua*. It argues that its right of redemption had not yet expired due to its timely filing of an action to annul the foreclosure proceedings.

The argument is untenable.

The ruling in *Ong Chua* involved a sale with a right to repurchase (*pacto de retro*), and the right of redemption was governed by Articles 1601<sup>68</sup> and 1606<sup>69</sup> of the Civil Code. It has no application to cases involving the right

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<sup>67</sup> *Philippine National Bank v. Spouses Perez*, 667 Phil. 450, 466 (2011).

<sup>68</sup> CIVIL CODE, Art. 1601 reads:

Art. 1601. Conventional redemption shall take place when the vendor reserves the right to repurchase the thing sold, with the obligation to comply with the provisions of Article 1616 and other stipulations which may have been agreed upon. (1507)

<sup>69</sup> CIVIL CODE, Art. 1606 reads:

Art. 1606. The right referred to in Article 1601, in the absence of an express agreement, shall last four years from the date of the contract.

of redemption of an extrajudicially foreclosed property under Sec. 6<sup>70</sup> of Act 3135.<sup>71</sup> Verily, *Ong Chua* cannot apply in petitioner's favor because the present case did not arise from a *pacto de retro* sale, but from an extrajudicial foreclosure under Act 3135.

As to the issue of whether DBP acquired ownership by virtue of the extrajudicial foreclosure and validity of the real estate mortgage, this was already resolved by the RTC Makati in Civil Case No. 12520. To recall, the CA denied petitioner's appeal in CA-G.R. CV No. 92706, and affirmed the November 9, 2005 Decision of the RTC Makati.

It bears repeating that the issuance of a writ of possession to a purchaser in a public auction is a ministerial function of the court, which cannot be enjoined or restrained, even by the filing of a civil case for annulment of foreclosure and auction sale.<sup>72</sup> Given the ministerial nature of the trial court's duty to issue a writ of possession after the purchaser has consolidated his ownership, any question regarding the regularity and validity of the mortgage or its foreclosure cannot be raised as justification for opposing the issuance of the writ.<sup>73</sup> A pending action for annulment of mortgage or foreclosure does not stay the issuance of a writ of possession. Indeed, the trial court need not look into the validity of the mortgage or the manner of its foreclosure. The purchaser is entitled to a writ of possession without prejudice to the outcome of the pending annulment case.<sup>74</sup>

*Sec. 6 of Rule 39 does not apply  
in issuing a writ of possession  
under Sec. 8 of Act 3135.*

Petitioner maintains that respondents should have filed an action for the revival of the 1983 Order of the RTC Manila which granted DBP's petition

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Should there be an agreement, the period cannot exceed ten years. However, the vendor may still exercise the right to repurchase within thirty days from the time final judgment was rendered in a civil action on the basis that the contract was a true sale with right to repurchase. (1508a)

<sup>70</sup> Act 3135, Sec. 6 reads:

Sec. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act. (As Amended by Act 4118)

<sup>71</sup> See *Mahinay v. Dura Tire & Rubber Industries*, 810 Phil. 57 (2017), where the Court did not apply the ruling in *Consolidated Bank & Trust Corp. v. Intermediate Appellate Court*, 234 Phil. 582, 590 (1987) which in turn, adopted the ruling in *Ong Chua v. Carr*; id. at 73-74.

<sup>72</sup> *PCI Leasing & Finance, Inc. v. Gutierrez*, G.R. Nos. 182842 & 199393, September 4, 2019, 917 SCRA, 607, 624.

<sup>73</sup> *Baring v. Elena Loan and Credit Company, Inc.*, 816 Phil. 766, 775 (2017).

<sup>74</sup> *BPI Family Savings Bank, Inc. v. Golden Power Diesel Sales Center, Inc.*, 654 Phil. 382, 394 (2011).



for issuance of a writ of possession. This argument is flawed and proceeds from an erroneous understanding of the nature of the petition in LRC CAD REC No. 137.

This court had the occasion to explain in *The PTA of St. Matthew Christian Academy v. Metropolitan Bank and Trust Co.*,<sup>75</sup> that a petition for the issuance of a writ of possession is not a judicial process that involves an ordinary suit based on a cause of action. The action is non-litigious and summary in nature, and does not even require notification to the adverse party. Thus:

**This *ex parte* petition for the issuance of a writ of possession under Section 7 of Act No. 3135 is not, strictly speaking, a “judicial process” as contemplated in Article 433 of the Civil Code. As a judicial proceeding for the enforcement of one’s right of possession as purchaser in a foreclosure sale, it is not an ordinary suit by which one party “sues another for the enforcement of a wrong or protection of a right, or the prevention or redress of a wrong.”**

In *Idolor v. Court of Appeals*, we described the nature of the *ex parte* petition for issuance of possessory writ under Act No. 3135 to be a **non-litigious proceeding and summary in nature**. As an *ex parte* proceeding, it is brought for the benefit of one party only, and without notice to, or consent by any person adversely interested. It is a proceeding where the relief is granted without requiring an opportunity for the person against whom the relief is sought to be heard. It does not matter even if the herein petitioners were not specifically named in the writ of possession nor notified of such proceedings. In *Sagarbarria v. Philippine Business Bank*, we rejected therein petitioner’s contention that he was denied due process when the trial court issued the writ of possession without notice.<sup>76</sup> (Emphasis supplied, citations omitted)

In *Cabuhad*,<sup>77</sup> We further said:

A petition under Section 8 of Act No. 3135 is *filed in the same proceedings where possession is requested*. This is a summary proceeding under Section 7 because the issuance of a writ of possession is a *ministerial function* of the RTC. **This possessory proceeding is not a judgment on the merits, but simply an incident in the transfer of title. Consequently, the judgment cannot produce the effect of *res judicata*.**

A Section 8 proceeding is narrowly designed only to **set aside the sale and/or the order granting possession** under Section 7. It cannot annul the validity of the foreclosure or of the mortgage. **Due to its very limited scope, it cannot entertain issues beyond the procedural irregularities in the sale.**

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<sup>75</sup> Supra note 62 at 684-685.

<sup>76</sup> Id. at 684-685.

<sup>77</sup> Supra note 65, at 606.

**The remedy of a litigant who challenges the existence of the mortgage or the validity — not the regularity — of the foreclosure is a separate action to annul them. These grounds outside Section 8 have to be threshed out in a full-blown trial.**<sup>78</sup> (Emphasis supplied, citations omitted)

On the other hand, the independent action for revival of judgment under Sec. 6, Rule 39 of the Rules of Court contemplates a prior adjudication of rights or claims of opposing parties in an ordinary civil action. Revival of judgments is a procedure derived from civil procedure and proceeds from the assumption that the judgment is susceptible to prescription.<sup>79</sup>

In here, the writ of possession secured by private respondents through their predecessor-in-interest, DBP, stemmed from an extrajudicial foreclosure proceeding under Act No. 3135, and not an execution sale under Rule 39 of the Rules of Court. In this light, a revival of judgment is not necessary, and a mere motion to issue a writ of possession shall suffice.

*The validity of the sale of the subject property requires factual determination which is prohibited in a petition for review under Rule 45.*

The Court likewise rejects petitioner's attempt to have Us review the factual incidents leading to the sale of the subject property for allegedly violating Sec. 12 of the SPV Act and the prohibition against alienation of real properties to foreign entities. Notable that these matters require factual determination, and cannot be the subject of a petition for review under Rule 45 of the Rules which should be limited only to questions of law.

Furthermore, the Court notes the averments made by private respondents that these matters are already the subject of a separate action before the RTC of Makati City, Branch 150 (Civil Case No. 11-015) which petitioner had initiated. Evidently, incorporating the issues that are purportedly subject of a pending civil case in the present petition, borders on forum shopping.

**WHEREFORE**, the Court **DENIES** the petition for review for being unmeritorious; **AFFIRMS** the Resolutions dated November 23, 2012 and April 19, 2013 of the Court of Appeals in CA-G.R. SP No. 126170; and **ORDERS** petitioner to **PAY** costs of suit.

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<sup>78</sup> Id. at 606.

<sup>79</sup> See *Republic v. Nillas*, 541 Phil. 277, 287-293 (2007).

The E-mail dated November 7, 2022 of Atty. Nick Pataueg, Jr., counsel for petitioner, inquiring when will the case be possibly calendared for deliberation, for reasons stated therein, is **NOTED**.

**SO ORDERED.”** *Zalameda, J., no part due to prior participation in the proceedings before the Court of Appeals. Lopez, J. J., designated Additional Member per Raffle dated December 28, 2022.*

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court

**253-A**

**JAN 31 2023**

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