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Forces of the Philippines would be entitled to as of the time of his retirement, and the pension and benefits that were granted to him as a staff sergeant at the time he was retired, to be counted as of January 31, 1947 when he was retired. No pronouncement as to costs.

IT IS SO ORDERED.

Fernando, Barredo, Antonio, Fernandez, and *Aquino, JJ.,* concur.

SECOND DIVISION

[G.R. No. L-30351. September 11, 1974]

AUREA BAÑEZ and RAMON BAÑEZ, Substituted by their legal heir, OSCAR VIRATA BAÑEZ, *petitioners, vs.* **COURT OF APPEALS and PIO ARCILLA,** *respondents.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; VIODABLE CONTRACTS; ACTION FOR ANNULMENT OF CONTRACTS MAY BE INSTITUTED BY ALL WHO ARE OBLIGED PRINCIPALLY OR SUBSIDIARILY; EXCEPTION; NOT APPLICABLE IN CASE AT BAR.**— Article 1397 of the Civil Code provides that the action for annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. Hence strangers to the contract who are not bound thereby have neither the right nor the personality to bring an action to annul such contract. It cannot be gainsaid that respondent Pio Arcilla was a stranger to, and not bound principally or subsidiarily by, the conditional contract to sell executed on May 20, 1960 by the PHHC in favor of Cristeta L. Laquihon, and the transfer of rights over the same lot from Basilio

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Laquihon to Aurea V. Bañez. Hence respondent Pio Arcilla could not bring an action to annul the same. There is, however, an exception to the rule laid down in Article 1397. This Court, in *Teves vs. People's Homesite and Housing Corporation,* L-21498, June 27, 1968 citing *Ibañez vs. Hongkong and Shanghai Bank*, held that "a person who is not a party obliged principally or subsidiarily in a contract may exercise an action for nullity of the contract if he is prejudiced in his rights with respect to one of the contracting parties, and can show the detriment which would positively result to him from the contract in which he had no intervention." The Court of Appeals found that Pio Arcilla "makes no pretense that he entered into and built his land upon appellee PHHC's land with the consent of the latter." Pio Arcilla was, therefore, a trespasser, or a squatter, he being a person who settled or located on land, inclosed or uninclosed with "no *bona fide* claim or color of title and without consent of the owner. He began his material possession of the lot in bad faith, knowing that he did not have a right thereto, and it is presumed that his possession continued to be enjoyed in the same character in which it was acquired, *i.e.*, in bad faith until the contrary is proved. And what right can a squatter have to the land into which he has intruded against the owner of the land? The answer is not hard to find. A squatter can have no possessory rights whatsoever, and his occupancy of the land is only at the owner's sufferance, his acts are merely tolerated and cannot affect the owner's possession. The squatter is necessarily bound to an implied promise, that he will vacate upon demand.

2. **ID.; ID.; SALES; PREFERENTIAL RIGHT OF OCCUPANT TO PURCHASE LOT; WHEN APPLICABLE.**— It is not stated expressly in the resolutions, and neither can it be necessarily implied therefrom, that the occupant was given a preferential right to purchase the lot he occupied. In fact Resolution No. 562 explicitly states that although a squatter shall be treated on the same footing as other qualified applicants, said occupant has no preference at all by reason of said occupancy. In the instant case, it is not even shown, although it was taken for granted, that respondent Pio Arcilla was a qualified applicant who should be treated on the same footing as others. The fact is that said respondent never filed an application for the lot, so he cannot be a *qualified applicant.* A squatter found to be qualified and deserving was to be given preferential award,

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not necessarily to the same lot he occupies but only in PHHC resettlement projects; and it does not appear that Lot 5, Block E-130, in question, is in a resettlement project.

3. **ID.; ID.; ID.; RESOLUTION BY OPERATION OF LAW OF CONTRACT TO SELL BY VIRTUE OF STIPULATED RESOLUTORY CONDITION BECOMES EFFECTIVE ONLY FROM DATE OF WRITTEN NOTICE OF THE CORPORATION TO APPLICANT IN CASE AT BAR.**— It is certain, therefore, that the said contract to sell in the instant case was by virtue of the stipulated resolutory conditions resolved by operation of law. But the Court of Appeals overlooked in the instant case the express provision of the contract to sell that *said resolution becomes effective only from the date written notice thereof is sent by the PHHC to the applicant.* Thus paragraph 12 of the contract to sell (Exhibit 7) provides: "Should the APPLICANT violate, refuse or fail to comply with any of the terms and conditions stipulated herein or default in the payment of three monthly installments as provided for in paragraph 1 hereof, this contract shall be deemed annulled and cancelled and the CORPORATION shall be at liberty to dispose of said property to any other person in the same manner as if the contract had never been made x x x The annulment and cancellation and the right of the CORPORATION to repossess the property shall become effective from the date written notice thereof is sent by the CORPORATION to the APPLICANT at his last known post-office address x x x." The record does not show, and the decision of the Court of Appeals does not state, that the PHHC ever notified in writing the awardee of the cancellation of the contract to sell. Hence, the resolution of the contract never became effective. Consequently, whatever rights the original awardee Cristeta Laquihon had over the disputed lot were transmitted upon her death to her only legal and compulsory heir, her father Basilio (Art. 777, Civil Code) which rights the latter could also convey to herein petitioners. But even if it be assumed *gratia argumenti*, that the original awardee Cristeta Laquihon acquired no vested right to the lot upon her death because of her failure to comply with the resolutory condition of constructing a house on the lot, and the lot had to revert to the PHHC, still it cannot be denied that the PHHC waived the effects of said resolutory condition when its Board of Directors approved, on November 15, 1962, the transfer to Aurea Bañez. In consenting to the transfer, the

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PHHC necessarily waived any right that might have accrued to it by virtue of the resolution of the contract before the transfer.

4. **REMEDIAL LAW; ACTIONS; APPEALS; ASSIGNMENT OF ERRORS; FOR A QUESTION TO BE CONSIDERED BY THE COURT OF APPEALS; IT MUST BE STATED IN THE ASSIGNMENT OF ERRORS AND MUST BE PROPERLY ARGUED IN THE BRIEF.**— Section 7 of Rule 51 of the Rules of Court provides that in order that a question may be considered by the Court of Appeals, said question must be stated in the assignment of errors and it must be properly argued in the brief. (*Traders Insurance and Surety Co. vs. Golangco, et al.*, 95 Phil. 824, 830; *Tan Si Kiok v. Tiacho*, 79 Phil 696. 698.) We note that there were only two errors assigned in appellant's brief in the Court of Appeals; namely: that the trial court erred in holding that (1) the claim of plaintiff that defendant was disqualified to acquire lot 5 for she already owned lot in San Juan was not substantiated, and (2) there was a valid perfected contract of sale between the PHHC and the late Cristeta Laquihon, and between the PHHC and Aurea Bañez and Ramon Bañez, and that they are bound by the terms and conditions thereof. Hence the alleged intercession of the then Senator Estanislao Fernandez in the transfer of right by Basilio Laquihon to petitioners, which was not stated in the assignment of errors and not argued in the brief, should have not been considered by the Court of Appeals.

5. **CIVIL LAW; LAND TITLES AND DEEDS; TAX RECEIPTS AND TAX DECLARATION DO NOT VEST OWNERSHIP OF PROPERTY TO DECLARANT.**— The sole evidence submitted by respondent Arcilla to prove that petitioners herein were disqualified to be transferees of the lot in question was the certification of the Treasurer of San Juan (Exhibit I) that there is a Tax Declaration No. 23804 of the land records of said municipality in the name of Ramon and Aurea Bañez. Said tax declaration is insufficient to prove ownership. It has been held anent this matter that — "Assessment alone is of little value as proof of title. Mere tax declaration does not vest ownership of the property in the declarant" (*Province of Camarines Sur vs. Director of Lands*, 64 Phil. 600, 613 citing *Evangelista vs. Tabayuyong*, 7 Phil. 607; *Casimiro vs. Fernandez*, 9 Phil. 562; *Elumbaring vs. Elumbaring*, 12 Phil. 384). It is well-settled that neither tax receipts nor declaration of ownership for taxation

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purposes are evidence of ownership or of the right to possess realty when not supported by other effective proofs. (*Elumbaring vs. Elumbaring*, 12 Phil. 384, 388-389.) It has not been proven, therefore, that petitioners herein are owners of a lot in San Juan, and consequently disqualified to be transferees of the questioned lot.

APPEARANCES OF COUNSEL

Domingo A. Songalia for petitioners.
Arsenio R. Reyes for respondent.

D E C I S I O N

ZALDIVAR, *J.*:

A petition for review of the decision of the Court of Appeals in C.A.-G.R. No. 36227-R (*Pio Arcilla, plaintiff-appellant, versus Aurea Bañez, Ramon Bañez and People's Homesite and Housing Corporation, defendants-appellees*).

The pertinent facts or the case are as follows:

In 1956 respondent Pio Arcilla occupied a parcel of land, later known as Lot 5, Block E-130, East Avenue Subdivision, Diliman, Quezon City, owned by the People's Homesite and Housing Corporation (hereinafter referred to as PHHC). He fenced the lot with wire, and erected a house and made some plantings thereon. His moves to apply for the acquisition of the lot from the PHHC when the same became available for disposition came to naught because the employees of the PHHC whose help he sought merely regaled him with promises that the matter would be attended to. Nevertheless, his occupancy was made a matter of record with the PHHC in connection with a census of occupants and squatters taken some time later.

Notwithstanding respondent Arcilla's occupancy, the lot was awarded, on May 20, 1960, to Cristeta L. Laquihon pursuant to a conditional contract to sell executed by the PHHC, subject to the standard resolutory conditions imposed upon grants of similar nature, including the grantee's undertaking to eject

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trespassers, intruders or squatters on the land, and to construct a residential house on the lot within a period of one year from the signing of the contract, non-compliance with which conditions would result in the contract being "deemed annulled and cancelled." Respondent Arcilla had no notice of this award, and neither did the grantee nor the PHHC take any step to oust him from the premises occupied by him. It was only on April 29, 1963 that he was first required to leave the area aforesaid.

Meanwhile, on May 9, 1962, grantee Cristeta L. Laquihon died, survived by her father, Basilio Laquihon, who, on July 27, 1962, executed a deed of adjudication in his favor of the rights and interests thus far acquired by his deceased daughter over the lot in question. In said deed Basilio Laquihon also acknowledged an indebtedness of the deceased to herein petitioner Aurea V. Bañez in the sum of ₱3,000.00 and agreed to assign the rights thus adjudicated by way of payment of the debt. The corresponding request for the transfer of the rights from Cristeta to Basilio L. Laquihon was made by the latter to the PHHC on August 9, 1962, while an undated request for the approval of the assignment of said land to Aurea V. Bañez as above stated was similarly filed with the PHHC.

The PHHC referred the requests for transfer and for assignment to its Head Executive Assistant, Olimpio N. Epis, for study. Mr. Epis, in his memorandum, opined that, because the grantee failed, among others, to construct a residential house on the land within the period provided in the conditional contract, the grantee's rights under the contract were forfeited and, accordingly, she did not acquire any right which could be transmitted upon her death to her alleged successor, Basilio Laquihon. Hence, he recommended the disapproval of the petition for transfer. It appears, however, that the unfavorable recommendation of Mr. Epis was not acted upon by the Board of the PHHC but, instead, was returned by the General Manager to Mr. Epis with verbal instructions to restudy the matter. After a restudy, Mr. Epis changed his opinion, and considered the transfers from Cristeta L. Laquihon to Basilio Laquihon, and from the latter to Aurea V. Bañez, to be proper and meritorious, and recommended the approval of the same. This was in

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conformity with a previous recommendation made by PHHC's Homesite Sales Supervisor, Roman Carreaga, to the PHHC's General Manager. On November 15, 1962, PHHC's Board of Directors adopted Resolution No. 200 approving the transfer of rights from Basilio Laquihon to Aurea V. Bañez as a meritorious case. The transfer thus approved, petitioner Aurea V. Bañez continued paying the installments on the purchase price of the land.

Respondent Pio Arcilla did not know of the foregoing developments until sometime in 1963 when he was given notice to vacate the lot occupied by him. He then interposed a protest against the award and transfer to petitioner Aurea V. Bañez, claiming that the original awardee acquired no rights to the aforesaid lot and that the transferee was disqualified from acquiring lots of the PHHC. Since the PHHC's Board of Directors had theretofore approved the transfer objected to, the Administrative Investigating Committee, to whom the protest was referred for resolution, considered itself without any further power to review the action of the Board, and accordingly dismissed the protest. In the meantime, petitioner Aurea V. Bañez completed the installment payments on the land, and on October 29, 1964, the PHHC executed the corresponding deed of sale over the lot in her favor.

Thus left without recourse before the PHHC, respondent Arcilla went to court with his complaint to nullify the award of the lot in question in favor of petitioner Aurea V. Bañez and to compel the PHHC to award the same to him, with prayer for attorney's fees and costs. After trial on the merits, the court *a quo* found for petitioners and accordingly decreed the dismissal of respondent's complaint, without costs.

Respondent Arcilla appealed to the Court of Appeals, which rendered the decision sought to be reviewed, the dispositive portion of which decision reads thus:

"WHEREFORE, the judgment appealed from is hereby reversed and, in lieu thereof, another is hereby rendered declaring null and void the transfer of rights over and award of lot 5, Block B-130, East Avenue Subdivision of appellee PHHC, in favor of appellee Aurea

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Bañez and ordering appellee People's Homesite and Housing Corporation to afford appellant Pio Arcilla the opportunity, within thirty (30) days from the finality of this decision, to perfect his preferential right to purchase said lot and thereafter to execute and deliver such deed and documents necessary to consummate the sale to said appellant."

Seeking a review of the decision, petitioners filed the instant petition. During its pendency, petitioner Ramon Bañez died on March 30, 1972, and petitioner Aurea Bañez also died on August 11, 1972, and the motion to have their heir, Oscar Virata Bañez, substituted for them, was granted by this Court on October 9, 1972.

Petitioners in their Brief made assignments of error, as follows:

1. That the Court of Appeals erred in holding that the respondent Pio Arcilla has the personality to seek the annulment of the award and sale, of Lot 5, Block E-130, East Avenue Subdivision, Diliman, Quezon City, belonging to the PHHC, to the applicant Cristeta L. Laquihon on May 20, 1960, by PHHC, and the transfer of her rights over the lot by her father Basilio Laquihon to the petitioner Aurea Bañez in payment of the indebtedness of Cristeta L. Laquihon to the petitioner Aurea Bañez in the amount of ₱3,000.00;

2. The Court of Appeals erred in holding that the respondent Pio Arcilla has a preferential right to purchase the lot in question, lot 5, block E-130, East Avenue Subdivision, Quezon City, of the People's Homesite and Housing Corporation;

3. That the Court of Appeals erred in holding that the award of the lot in question to Cristeta L. Laquihon, made on May 20, 1960 was null and void, because said awardee failed to construct a house in the lot within a period of one (1) year from the signing of the contract to sell and, therefore, upon the death of Cristeta L. Laquihon on May 9, 1962, she transferred no rights to her father Basilio Laquihon and said Basilio Laquihon could not validly sell his rights of the lot in question to the petitioners;

4. That the Court of Appeals erred in holding that the approval of the transfer of rights of the late Cristeta L. Laquihon by her father Basilio Laquihon to the petitioner Aurea Bañez

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was due to the intercession of the then Senator Estanislao Fernandez; and

5. That the Court of Appeals erred in holding that the petitioners are not qualified to acquire the lot in question for having allegedly a lot in San Juan, Rizal.

1. Article 1397 of the Civil Code provides that the action for annulment of contracts may be instituted by all who are thereby obliged principally or subsidiarily. Hence strangers to the contract who are not bound thereby have neither the right nor the personality to bring an action to annul such contract. It cannot be gainsaid that respondent Pio Arcilla was a stranger to, and not bound principally or subsidiarily by, the conditional contract to sell executed on May 20, 1960 by the PHHC in favor of Cristeta L. Laquihon, and the transfer of rights over the same lot from Basilio Laquihon to Aurea V. Bañez. Hence respondent Pio Arcilla could not bring an action to annul the same.

There is, however, an exception to the rule laid down in Article 1397. This Court, in *Teves vs. People's Homesite and Housing Corporation,* L-21498, June 27, 1968[1] citing *Ibañez vs. Hongkong and Shanghai Bank*,[2] held that "a person who is not a party obliged principally or subsidiarily in a contract may exercise an action for nullity of the contract if he is prejudiced in his rights with respect to one of the contracting parties, and can show the detriment which would positively result to him from the contract in which he had no intervention." Pursuant to said doctrine, in order that respondent Pio Arcilla might bring an action for the nullity of the contracts aforesaid, he should have been not only prejudiced in his rights with respect to one of the contracting parties, but must have also shown the detriment which he would positively suffer from the contracts. It becomes, therefore, necessary to inquire, whether respondent Pio Arcilla's rights were prejudiced by the aforesaid contracts, and as to what detriment, if any, he suffered because of those contracts.

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[1] 23 SCRA 1141, 1147-1148.

[2] 22 Phil. 572, 584-585.

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What rights of respondent Pio Arcilla were prejudiced? The Court of Appeals found that Pio Arcilla "makes no pretense that he entered into and built his land upon appellee PHHC's land with the consent of the latter." Pio Arcilla was therefore, a trespasser, or a squatter, he being a person who settled or located on land, inclosed or uninclosed with "no *bona fide* claim or color of title and without consent of the owner."[3] He began his material possession of the lot in bad faith, knowing that he did not have a right thereto, and it is presumed that his possession continued to be enjoyed in the same character in which it was acquired, *i.e.*, in bad faith until the contrary is proved.[4] And what right can a squatter have to the land into which he has intruded against the owner of the land? The answer is not hard to find. A squatter can have no possessory rights whatsoever, and his occupancy of the land is only at the owner's sufferance, his acts are merely tolerated and cannot affect the owner's possession.[5] The squatter is necessarily bound to an implied promise, that he will vacate upon demand.

This Court, in *Bernardo, et al. vs. Bernardo and Court of Appeals,*[6] laid down the doctrine that:

> "In carrying out its social readjustment policies, the government could not simply lay aside moral standards, and aim to favor usurpers, squatters, and intruders, unmindful of the lawful or unlawful origin and character of their occupancy. Such a policy would perpetuate conflicts instead of attaining their just solution."

Respondent Pio Arcilla, having no possessory rights whatsoever, what detriment could he have suffered from the aforesaid contracts?

The Court of Appeals, however, held that respondent Pio Arcilla had a right to purchase the lot occupied by him. The

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[3] *Baker vs. State*, 71 S.E. 594; 9 Ga. App. 423.

[4] Article 529, Civil Code.

[5] Arts. 537 and 1119, Civil Code; *Yu vs. De Lara, et al.*, L-16084, 6 SCRA 785, 787.

[6] 6 Phil. 202, 206.

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discussion of this alleged right brings us to the second assignment of error.

2. We find merit in petitioners' second assignment of error.

Relying on the decision of the Court of Appeals, respondent Arcilla anchored his alleged preferential right to purchase Lot 5, Block E-130 on Resolution No. 562 of PHHC's Board of Directors, dated June 27, 1963, which reads as follows:

"(1) No preference, advantage or benefit shall be given to squatters in the allocation of PHHC, residential lots by reason alone of their prior occupancy thereof, but they shall be treated on the same footing as other qualified applicants. Squatters who are found qualified and deserving shall be given preferential awards only in PHHC resettlement projects, if they voluntarily comply with PHHC rules and policies without waiting to be evicted thru court proceedings."

and on Resolution No. 558, dated April 16, 1962, which approved the recommendations of its Acting Chief Legal Officer. The recommendations included the proposed "*Application Forms* No. 6-D and No. 6-F" for non-occupants and occupants or squatters, respectively, and provided, among others, that:

"(6) The Sales and Management Department should have a ready and up-to-date census of all lots occupied by squatters within PHHC subdivisions open for sale or award, in order that lots occupied by squatters who are not qualified to buy the same, or who do not merit an award shall not be awarded to anybody until the PHHC has obtained a final court decision for the eviction of such squatter." (Exhibit 1-B)

It should not be lost sight of, however, that according to the decision of the Court of Appeals, "Time there may have been, perhaps, when occupancy of a lot without the consent of said appellee was not recognized at all as basis for a claim to a right to purchase said lot"; and that "on the face of the evidence presented before us in this case, we note a clear shift in policy in the disposition of lots of appellee PHHC," and the shift in policy was evidenced by the afore-quoted resolutions.

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If the afore-quoted resolutions relied upon by respondent Arcilla were evidence of the shift of policy, then, it stands to reason that before the adoption of said resolutions, the policy of the PHHC was different; otherwise, there would have been no reason for a change of policy. Resolution No. 562 was dated June 27, 1963. Hence the policy before June 27, 1963 was different. In fact even the Court of Appeals noted that before said date, "occupancy of a lot" was perhaps "not recognized at all as a basis for a claim of a right to purchase said lot." Hence at the time Lot No. 5 was awarded to Cristeta L. Laquihon on May 20, 1960, and at the time the PHHC approved the transfer of original awardee's rights to herein petitioners on Nov. 15, 1962, it was not yet the policy of the PHHC to recognize mere occupancy of a lot as giving a right to purchase the same, for said policy was adopted only later, *i.e.,* on June 27, 1963.

Moreover, it is not stated expressly in the above-quoted resolutions, and neither can it be necessarily implied therefrom, that the occupant was given a preferential right to purchase the lot he occupied. In fact Resolution No. 562 explicitly states that although a squatter shall be treated on the same footing as other qualified applicants, said occupant has no preference at all by reason of said occupancy. In the instant case, it is not even shown, although it was taken for granted, that respondent Pio Arcilla was a qualified applicant who should be treated on the same footing as others. The fact is that said respondent never filed an application for the lot, so he cannot be a *qualified applicant.* A squatter found to be qualified and deserving was to be given preferential award, not necessarily to the same lot he occupies but only in PHHC resettlement projects; and it does not appear that Lot 5, Block E-130, in question, is in a resettlement project.

Furthermore, said preferential award in resettlement projects is granted only in case the squatter is not evicted through court proceedings. In the instant case, respondent Arcilla had been ejected from the lot through court proceedings in Civil Case No. IV-11691 of the City Court of Quezon City. If a squatter was given a preferential right to the lot he occupies, how come that the same Resolution No. 562 also provided that "No

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administrative case shall be entertained on the basis alone of a squatter's claim of prior or actual occupancy of PHHC lot?"

We hold that the claim, of respondent Pio Arcilla to the alleged preferential right to purchase Lot 5, Block E-130, had not been substantiated.

3. Respondent Arcilla argues that the awardee of the lot, Cristeta L. Laquihon, did not comply with the resolutory condition of building a house; so, she acquired no rights that could be transmitted to her father.

This Court cannot sustain respondent's stand.

The Court of Appeals stated in its decision that the contract to sell, dated May 20, 1960, executed by the PHHC in favor of Cristeta L. Laquihon was —

"subject to the standard resolutory conditions imposed upon grants of similar nature, including the grantee's undertaking to eject trespassers, intruders or squatters on the land and to 'construct a residential house on the lot and shall complete the same within a period of (1) year from the signing of this contract with no extension,' the non-compliance with which results in the contract being 'deemed annulled and cancelled' (Exhibit 7)."

Because no residential house, continued the Court of Appeals, was ever erected by the awardee on the premises — not even until she died on May 9, 1962, "she failed to comply with a condition of the award, the non-compliance with which has a resolutory effect upon the award," such that when Cristeta L. Laquihon died, she acquired no vested right in the land, and she transmitted nothing to her father, Basilio Laquihon, who, on his part, could not have transferred any right to petitioners Bañez.

It is granted that by virtue of the resolutory condition, the resolution of the contract took place by force of law and that there was no need of judicial declaration to resolve the contract. Civilists, however, are not agreed on whether the injured party retains the option of demanding fulfillment or rescission of the obligation as provided in Article 1191 or not. Thus Collin y

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Capitant, Curson Elemental de Derecho Civil, Vol. III, p. 750 says:

"*En la hipótesis de una cláusula del contrato que pronuncie una resolución eventual, hay que proclamar la validez de tal cláusula en el Derecho español siempre que no aparezca por sus circumstancias como contraria a la ley o a las buenas costumbres.*

"*El efecto de tal cla usula será que la resolución se produzca de pleno derecho, sin intervención judicial; pero entendemos que, a pesar de ella el acreedor conservará el derecho de opción que le concede el Art. 1124* [Art. 1191 of the Civil Code of the Philippines] *a no ser que la cláusula misma resulte otra cosa.*"

Manresa, in Commentaries al Codigo Civil Español, 1967, Vol. VIII, p. 416, however, says that the stipulated resolution of the contract in case one of the parties does not comply with his undertaking is produced by force of law, but the option of the injured party disappears.

If the creditor could still demand, in spite of the resolution *ipso jure* of the contract, then the resolution would not be mandatory on the creditor and the resolution would produce its effect when the creditor notified the debtor of his decision. (Tolentino, Civil Code of the Philippines, Vol. IV, p. 175.)

It is certain, therefore, that the said contract to sell in the instant case was by virtue of the stipulated resolutory conditions resolved by operation of law. But the Court of Appeals overlooked in the instant case the express provision of the contract to sell that *said resolution becomes effective only from the date written notice thereof is sent by the PHHC to the applicant.* Thus paragraph 12 of the contract to sell (Exhibit 7) provides:

"12. Should the APPLICANT violate, refuse or fail to comply with any of the terms and conditions stipulated herein or default in the payment of three monthly installments as provided for in paragraph 1 hereof, this contract shall be deemed annulled and cancelled and the CORPORATION shall be at liberty to dispose of said property to any other person in the same manner as if the contract had never been made x x x The annulment and cancellation and the right of the CORPORATION to repossess the property shall become effective

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from the date written notice thereof is sent by the CORPORATION to the APPLICANT at his last known post-office address x x x."

The record does not show, and the decision of the Court of Appeals does not state, that the PHHC ever notified in writing the awardee of the cancellation of the contract to sell. Hence, the resolution of the contract never became effective. Consequently, whatever rights the original awardee Cristeta Laquihon had over the disputed lot were transmitted upon her death to her only legal and compulsory heir, her father Basilio (Art. 777, Civil Code) which rights the latter could also convey to herein petitioners.

But even if it be assumed *gratia argumenti,* that the original awardee Cristeta Laquihon acquired no vested right to the lot upon her death because of her failure to comply with the resolutory condition of constructing a house on the lot, and the lot had to revert to the PHHC, still it cannot be denied that the PHHC waived the effects of said resolutory condition when its Board of Directors approved, on November 15, 1962, the transfer to Aurea Bañez. In consenting to the transfer, the PHHC necessarily waived any right that might have accrued to it by virtue of the resolution of the contract before the transfer.

Regarding the other resolutory condition mentioned by the decision sought to be reviewed, and emphasized by private respondent, that the original awardee did not file an action for ejectment, it is to be noted that the awardee was not obliged to file said ejectment suit against respondent, the latter having squatted on the land since 1956 and the award to Cristeta Laquihon having been made only on May 20, 1960. On this matter, the Conditional Contract to Sell (Exhibit 7) explicitly provides that:

"3. x x x The applicant shall undertake the ejectment of any trespasser, intruder or squatter who shall build on the lot or who shall deprive him of the right to possess the same from the date of this contract."

The awardee was obliged to eject squatters "who shall build on the lot x x x from the date of this contract." Hence, respondent

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Arcilla having built his house or squatted on the land very much before, *i.e.*, 4 years before the land was awarded to awardee, the latter was not under contractual obligation to eject him.

Resolution No. 558 does not require, furthermore, that the applicant for, or transferee of, a PHHC lot should reside in Quezon City. What the Resolution requires is that he should have his "permanent residence or principal place of work or business in Quezon City, Manila or suburbs x x x" San Juan, the address of petitioners herein, is certainly included in the term "suburbs."

4. In support of their fourth assignment of error, that the Court of Appeals erred in holding that the approval of the transfer of the rights to the lot to petitioners was due to the intercession of the then Senator Estanislao Fernandez, petitioners argued that the issue of whether the letter of Senator Fernandez influenced the approval of the transfer was not assigned as error in respondent Arcilla's brief in the Court of Appeals, and neither was such influence alleged in the complaint, hence the Court of Appeals could not decide said issue; and that the Board of Directors, uninfluenced by politicians, used its discretion in approving the transfer.

Section 7 of Rule 51 of the Rules of Court provides that in order that a question may be considered by the Court of Appeals, said question must be stated in the assignment of errors and it must be properly argued in the brief. (*Traders Insurance and Surety Co. vs. Golangco, et al.*, 95 Phil. 824, 830; *Tan Si Kiok v. Tiacho,* 79 Phil. 696, 698.) We note that there were only two errors assigned in appellant's brief in the Court of Appeals, namely: that the trial court erred in holding that (1) the claim of plaintiff that defendant was disqualified to acquire lot 5 for she already owned lot in San Juan was not substantiated, and (2) there was a valid perfected contract of sale between the PHHC and the late Cristeta Laquihon, and between the PHHC and Aurea Bañez and Ramon Bañez, and that they are bound by the terms and conditions thereof. Hence the alleged intercession of the then Senator Estanislao Fernandez in the transfer of right by Basilio Laquihon to petitioners, which was

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not stated in the assignment of errors and not argued in the brief, should have not been considered by the Court of Appeals.

Moreover, the evidence on which the finding of the Court of Appeals that the PHHC accommodated petitioners because of the intercession of whoever wrote "Exhibit C, has no evidentiary basis, for Exhibit C was rejected by the trial court "for being immaterial, irrelevant, impertinent and not properly identified (TSN, Nov. 4, 1964, p. 90)." The party introducing it did not even ask permission from the Court that the same be attached to the record so that the appellate court may review the ruling of the trial court (*U.S. vs. Cabaraban,* 36 Phil. 251, 253-254; *Velez vs. Chaves*, 50 Phil. 676, 678-679). Evidence ruled out at the trial of the case cannot be taken into consideration in the decision, for that would infringe the constitutional right of the adverse party to due process of law (*Tinsay vs. Yusay and Yusay*, 47 Phil. 639, 643). Documents forming no part of the proofs before the appellate court will not be considered in disposing of the issues of an action (*De Castro v. Court of Appeals*, 75 Phil., 824, 835, citing *Dayrit v. Gonzales,* 7 Phil. 182; 5 Encyc. of Evidence, 469). Although said letter was written on stationery bearing the letterhead of the then Senator Fernandez, it does not conclusively follow that it was Senator Fernandez himself who wrote the letter. Even the signature of the letter was "illegible."

But assuming that the letter was written by Senator Fernandez, it cannot be implied from the facts of the case that the transfer of rights from Basilio Laquihon to petitioners herein was approved solely on the strength of such letter, for the approval of the transfer was recommended as "extremely meritorious" by the Head Executive Assistant (Exh. "2"), and by the Homesite Sales Supervisor (Exh. F). Neither can it be said that the approval of the transfer by the Board of Directors was vitiated by undue influence or that it was illegal. That letter, even if it was written really by Senator Fernandez, could not destroy the free agency of the PHHC Board of Directors, and it could not have interfered with the exercise of Board's independent discretion. This Court has already said that solicitation, importunity, argument and persuasion are not undue influence, and a contract is not to be

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set aside merely because one party used these means to obtain the consent of the others. Influence obtained by persuasion or argument or by appeals to the affections is not prohibited either in law or morals, and is not obnoxious even in courts of equity. Such may be termed "due influence." (*Martinez vs. Hongkong and Shanghai Bank*, 15 Phil. 252, 270.)

5. In support of their fifth assignment of error, petitioners argued that the Court of Appeals erred in relying merely on the certification of the Municipal Treasurer of San Juan to the effect that his office "has a record of real property holding of Ramon and Aurea Bañez" consisting of a lot located at M. J. Paterno Street and assessed at ₱31,190.00 under Tax Declaration No. 23804 of the land records of said municipality, for a tax declaration is not evidence of title of property, and respondent Arcilla did not present any other evidence to prove that petitioners are really owners of a lot in San Juan, Rizal; that even granting that they are owners of a lot, still as maintained by the PHHC, they are not disqualified to acquire the lot in question as they merely stepped into the shoes of the original purchaser Cristeta Laquihon; that R. A. No. 498, relied upon by respondent in his complaint in asserting that the award of the lot to petitioner Aurea Bañez was null and void, is not applicable to the case and could not therefore have been violated.

In the decision under review, the Court of Appeals said that to be an awardee of PHHC's lots, one must not "already own or hold under a contract to buy residential lot or lots in any subdivision situated in x x x San Juan x x x(Exhibits D-2 and Z)."

Paragraph 9 of the Conditional Contract to Sell (Exhibit 7) also provides that "any transfer that may be authorized or permitted by the CORPORATION shall be under the condition that the transferee is qualified to acquire a lot under the rules and regulations of the CORPORATION x x x."

The sole evidence submitted by respondent Arcilla to prove that petitioners herein were disqualified to be transferees of the lot in question was the certification of the Treasurer of San Juan (Exhibit I) that there is a Tax Declaration No. 23804 of

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the land records of said municipality in the name of Ramon and Aurea Bañez. Said tax declaration is insufficient to prove ownership. It has been held anent this matter that —

"Assessment alone is of little value as proof of title. Mere tax declaration does not vest ownership of the property in the declarant" (*Province of Camarines Sur vs. Director of Lands*, 64 Phil. 600, 613 citing *Evangelista vs. Tabayuyong,* 7 Phil. 607; *Casimiro vs. Fernandez,* 9 Phil. 562; *Elumbaring vs. Elumbaring,* 12 Phil. 384).

It is well-settled that neither tax receipts nor declaration of ownership for taxation purposes are evidence of ownership or of the right to possess realty when not supported by other effective proofs. (*Elumbaring vs. Elumbaring*, 12 Phil. 384, 388-389).

It has not been proven, therefore, that petitioners herein are owners of a lot in San Juan, and consequently disqualified to be transferees of the questioned lot.

R.A. No. 498, relied upon by herein respondent in his complaint, in asserting that the award to petitioners was null and void, is not applicable to the instant case. Said Act authorizes cities, municipalities and provinces to purchase and/or expropriate home sites and landed estates and subdivide them for resale at cost, and provides in Section 3 that "no such lot shall be sold to any person, who already owns a residential lot, and any sale made to such person shall be void." The PHHC not being a city, municipality, or province, it is apparent that that Act is not applicable to the instant case.

IN VIEW OF THE FOREGOING, the decision of the Court of Appeals, dated January 9, 1969, in CA-G. R. No. 36227-R, is set aside, and the decision of the Court of First Instance of Quezon City in Civil Case No. Q-7679, is affirmed.

Costs against respondent Pio Arcilla.

IT IS SO ORDERED.

Fernando, Barredo, Antonio, and *Aquino, JJ.*, concur.

Fernandez, J., no part — although he confirms that the letter attributed to him was not written and signed by him.