

CHESTER R. CLARKE, PETITIONER, VS. PHILIPPINE READY MIX CONCRETE CO., INC.; MOISES C. ANGELES, IN HIS CAPACITY AS ACTING SECRETARY OF PHILIPPINE READY MIX CONCRETE CO., INC., AN...*G. R. No. L-4036. April 13, 1951*

Ponente: MONTEMAYOR, J.

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This is a case of certiorari with preliminary injunction brought by petitioner Chester R. Clarke against the Philippine Ready Mix Concrete Co., Inc., a domestic corporation, and Judge Agustin P. Montesa who presided over Branch I of the Court of First Instance of Manila where petitioner had filed the complaint against the same respondent company in Civil Case No. 11814. According to the petition for certiorari, including its annexes, particularly the copy of the complaint in Civil Case No. 11814, petitioner subscribed to 475,000 shares of stock of the respondent company of the par value of Pi per share or a total of P475,000, of which amount, he has already paid down P124,000. On June 16, 1950, the Board of Directors of respondent company passed a resolution declaring all unpaid subscriptions of the capital stock including the 475,000 shares subscribed by petitioner, due and payable on June 30, 1950, and declaring all shares of stock not fully paid on said date to be delinquent as of July 25, 1950, said delinquent stocks to be sold at public auction on August 15th of the same year.

To protect his rights, to stop the threatened sale of his shares of stock and to have them declared as fully paid, petitioner filed the complaint in Civil Case No. 11814, alleging that respondent company was indebted to Clarke Halawa Rock Co., Ltd., a corporation organized under the laws of Hawaii and domiciled in Honolulu, in the amount of P346,632.98 for advances made by the said corporation for machinery purchased by respondent from it valued at P200,000 plus P146,000.98 for crating and shipping expenses from Honolulu to Manila of the machinery purchased; that said total indebtedness of P346,632.98 was already due and payable over a year before the filing of the complaint and that for value received the said claim of the Hawaii corporation had been sold and assigned to petitioner; that he had demanded the payment of said amount from the respondent company but the latter has failed to make payment; and that although compensation has taken place still, the respondent acting in bad faith, had advertised to sell his shares of stock on the ground that they were delinquent.

In that Civil Case, petitioner asked for the issuance of a writ of preliminary injunction to stop the sale. After hearing both parties and upon petitioner's filing a bond in the amount of P10,000, the corresponding writ of preliminary injunction was issued. However, according to petitioner, about an hour after its issuance, upon an ex parte motion of respondent company and upon its filing a counter bond in the sum of P10,000 the writ was dissolved by respondent Judge, and the motion for reconsideration of the order dissolving the writ was denied by respondent Judge.

The petitioner has now brought this case here on certiorari, with a petition for a writ of preliminary injunction, alleging that the respondent Judge in issuing his order lifting the writ previously issued in his favor after hearing,

without giving him an opportunity to be heard, had acted in excess of his jurisdiction or with grave abuse of discretion, and that petitioner has no plain, speedy and adequate remedy against respondents in the ordinary course of law. It further appears from the record that immediately after the lifting of the writ of preliminary injunction in the lower court, respondent company sold the 475,000 shares of stock of petitioner to the company itself for P392,181.02, there having been no other bidder at the auction sale.

Respondent company in its answer to the petition for certiorari, claims that the alleged assignment made by the Hawaii corporation of its alleged claim against it (respondent) in the amount of P346,632.98 was not evidenced by even a plain copy of the alleged assignment either attached to the complaint or produced during the hearing and, therefore, it seriously doubts that said assignment really took place; that even assuming that said assignment had been made, still no compensation could have taken place since the alleged obligation of the respondent to the Hawaii corporation is still pending liquidation and therefore not yet due and payable.

By resolution of this Court dated August 17, 1950, a writ of preliminary injunction was issued against the respondent company upon petitioner's filing a bond of P1,000. On September 1, 1950, said resolution was amplified so as to restrain pendente lite the respondent company from making any disposition of the 475,000 shares of stock of petitioner.

The issues in the present case may be briefly stated as follows:

- (1) May a writ of preliminary injunction granted the plaintiff by a trial court after a hearing, be dissolved upon an ex parte application by the defendant?
- (2) May a writ of preliminary injunction issued after hearing in a case where the injunctive relief is not a mere ancillary remedy but the principal relief demanded by the plaintiff, be dissolved ex parte without a trial of the case on the merits?

The question involved in the first part has already been passed upon by this Court in the case of *Caluya vs. Ramos*, 79 Phil., 640; 45 Off. Gaz., No. 5, p. 2075, where we said:

"The first contention of the petitioners is that, as said injunction was issued after a hearing, the same cannot be dissolved, specially on the strength of an unverified motion for dissolution and in the absence of proper evidence to support it. Reliance is placed on section 6 of Rule 60 of the Rules of Court which provides that 'the injunction may be refused, or if granted ex parte, may be dissolved', thereby arguing that if an injunction is not issued ex parte the same cannot be dissolved. The contention is clearly erroneous. Although said section prescribes the grounds for objecting to, or for moving the dissolution of, a preliminary injunction prior to its issuance or after its granting ex parte, it does not thereby outlaw a dissolution if the injunction has been issued after a hearing. This is to be so, because a writ of preliminary injunction is an interlocutory order which is always under the control of the court before final judgment. (*Manila Electric Co., vs. Artiaga*, 50 Phil., 144.) *

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"* * * At any rate, as already stated, the respondent judge was not even required to hear the parties, if the record convinced him that the writ of preliminary injunction should be dissolved. (*Ong Su Han vs. Gutierrez David*, 43 Off. Gaz., 95). Specifically, it has been held that, in dissolving an injunction already issued, the Court cannot be considered as having acted without jurisdiction or with excess of jurisdiction, even if the dissolution has been made without previous notice to the adverse party, and without a hearing." (Italics ours)

Again, in the case of *Cine Ligaya vs. The Court of First Instance of Laguna, et al.*, 66 Phil., 659, this Court held:

"The law confers authority or jurisdiction on Courts of First Instance to issue writs of preliminary injunction ex parte and to dissolve those which they may have issued in said circumstances under prescribed limitations (sections 164, 166, 169, Act No. 190). It does not require that in order to annul or set aside a writ of

preliminary injunction issued by a Court of First Instance, a notice be previously sent to plaintiff; but it does require that, at least, a hearing be first held so that plaintiff may make such objections as he deems proper. Nevertheless, even if a previous notice were required and even if there had been no hearing on the petition to lift or dissolve the injunction granted, it can not be said for that reason that the courts dissolving the injunction thus issued, acted without or in excess of jurisdiction. The courts have such jurisdiction and the respondent judge in the case now before us had authority to take cognizance of the case and also, of course, of all the incidents thereof. The failure to send notice or to hold a hearing as required by section 169 aforesaid of Act No. 190 is not in any way jurisdictional so as to invalidate the proceedings of the court on the ground of lack or excess of jurisdiction. * * *

"At most, the respondent/ judge, in dissolving the writ of preliminary injunction which he had issued the day before, committed an error but not one involving lack of jurisdiction. It was only an error which should and can be remedied by appeal and not by certiorari." (Italics ours)

Also in the case of *Jaramillo vs. Jacinto, et al.*, (43 Phil. 588) this Court held that "failure to give such notice is merely an irregularity in the proceedings which do not go to the jurisdiction of the court and cannot be corrected by certiorari."

And, in the case of *So Chu and Limpangco vs. Nepomuceno and Neis*, 29 Phil., 208, it was held that "where court has jurisdiction over the person and subject matter of the action, a failure to give notice of subsequent steps in the action or proceeding is not jurisdictional and does not render an order without notice void."

As to the second issue, namely, whether a writ of preliminary injunction may be granted or dissolved, where such injunction is not only an ancillary remedy but is the principal relief demanded in the action, this Court, interpreting Sec. 164 of the Code of Civil Procedure (Act No. 190) whose provisions are similar to Rule 60, Sec. 3 of our Rules of Court, and whose phraseology is almost identical, stated the following:

"A. First of all it may be stated that in the case at bar the injunction applied for, constitutes, unlike the auxiliary and subordinate remedy that it ordinarily is, the principal remedy itself. The relief should be granted, therefore, after it has been established not only that the right sought to be protected exist, but also that the acts against which the injunction is to be directed are violative of said right." * * *

"The existence of a right violated is a prerequisite to the granting of an injunction * * *. A permanent injunction should not be awarded except in a clear case and to prevent irreparable injury. [32 C. J. 34-36]" (*North Negros Sugar Co., vs. Hidalgo*, 63 Phil., 670-671)

We are not in a position to know or to determine the reason or reasons that prompted the trial court to dissolve the writ of preliminary injunction previously issued by it. But it is highly possible that it was not convinced that the alleged debt of P346,632.98 owing to the Hawaii corporation was already liquidated and certain and due, and that it had really been assigned to the petitioner. According to respondent's counsel (page 2 of Respondents' reply to petitioner's memorandum), said attorney in open court, asked petitioner's counsel to produce even a plain copy of the alleged assignment, but no such deed of assignment could be presented. The only evidence of the alleged assignment is Exhibit "B" which is a cablegram sent by petitioner Chester R. Clarke from Okinawa to one Federico G. Santiago in Manila instructing him to demand immediate payment from respondent company of all its obligations to the Hawaii corporation and if necessary to institute court actions against respondent company to protect the interest of petitioner and the Hawaii corporation. Judging from this cablegram and the name Clarke Halawa Rock Co., Ltd., petitioner might be a partner and principal stockholder in the Hawaii corporation, and that he was acting on behalf of said corporation, but even assuming all this, there is nothing sufficient to show, much less, to convince this Court and the trial court that said credit had really been assigned to the petitioner so as to entitle him to the writ of injunction being continued pending trial on the merits.

In view of all the foregoing and being convinced that the action of the trial court in dissolving the writ of preliminary injunction already issued after hearing, without giving petitioner an opportunity to be heard, does not constitute lack or excess of jurisdiction or even abuse of discretion, and that the irregularity committed by the trial court on this score may be cured not by certiorari but by appeal, the present petition for certiorari is hereby denied, with costs. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Jugo and Bautista Angelo, JJ., concur.

MONTEMAYOR, J.:

I hereby certify that Mr. Justice Reyes voted for the denial of the petition.

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