

**PHILIPPINE ALIEN PROPERTY ADMINISTRATION, PETITIONER, VS.
HON. OSCAR CASTELO, JUDGE OF THE COURT OF FIRST INSTANCE
OF MANILA. PEDRO C. HERNAEZ AND ASUNCION DE LA RAMA VDA.
DE AL...**

G. R. No. L-3981. July 30, 1951

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/07146046a920/>

BAUTISTA ANGELO, J.:

This is a petition for certiorari with preliminary injunction. The injunction was granted in a resolution issued on July 31, 1950.

Petitioner is an agency of the United States of America created by Executive Order No. 9818 with authority to vest enemy owned properties in the Philippines. On July 7, 1949, respondents Pedro C. Hernaez and Asuncion de la Rama Vda. de Alunan, in her own behalf and as administratrix of the estate of her deceased husband Rafael R. Alunan, filed a complaint in the Court of First Instance of Manila against petitioner wherein it was alleged that Pedro C. Hernaez and the late Rafael R. Alunan were the owners of eight (8) parcels of land with the improvements thereon situated in the city of Manila, which were vested by the petitioner on April 22, 1947, in the United States of America and that, because of petitioner's refusal to release them to the respondents, the latter have suffered damages amounting to P5,000 a month. Respondents prayed that petitioner be ordered to vacate the properties in question and to restore them to the respondents and to pay damages at the rate of P5,000 a month from April 22, 1947, until the petitioner vacates the premises, together with the costs of action.

On July 20, 1949, petitioner answered the complaint admitting that it has vested the lots and improvements mentioned in the complaint as required by law for the reason that respondents had sold them to Hakodate Dock Co., Ltd., which was the registered owner thereof since March 3, 1943, and setting up two counterclaims, to wit, one for the return to petitioner of the sum of P36,789.68 which respondents had collected from the United States of America as rentals for the occupation of said property without being the owners thereof, and the other for the sum of P123,049.94 as reimbursement for the expenses incurred by petitioner in demolishing, repairing and improving the buildings erected on said lots in the event that the case is decided in favor of respondents. Petitioner likewise alleged as affirmative defense that the court of origin had no jurisdiction to entertain respondents' claim for P5,000 a month as damages because there was no statutory permission or consent granted to said respondents to sue petitioner with respect to said damages.

Leave having been granted by the court of origin to the Republic of the Philippines and to Dr. Nicanor Jacinto to intervene in the case, the former on August 11, 1949, filed an answer siding with the petitioner in resisting the claim of the respondents, and the latter on October 31, 1949, filed a complaint in intervention alleging that on November 6, 1939, Pedro C. Hernaez and Rafael R. Alunan mortgaged the properties in question to said intervenor to secure the payment of a loan of P160,000, which amount was on February 3, 1943, paid under duress to him by Hakodate Dock Co., Ltd., and for which he signed a release of said mortgage, and praying that,

irrespective of the ownership of said properties, the mortgage be declared in force and subsisting. Both petitioner and respondents answered the complaint in intervention alleging that the sum of P160,000 mentioned therein had been paid by Hakodate Dock Co., Ltd., to Dr. Jacinto voluntarily and that the mortgage has been properly cancelled and released.

On May 8, 1950, the lower court rendered decision in favor of the plaintiffs, the dispositive part of which is as follows:

"Plaintiffs Pedro C. Hernaez and Asuncion de la Rama Vda. de Alunan, in her own behalf and as judicial administratrix of the estate of the deceased Rafael R. Alunan, are the legal owners of the property under litigation and the defendant is hereby ordered to return the same to plaintiffs;

"Defendant Philippine Alien Property Administration is hereby ordered to pay to plaintiffs the sum of P3,375 a month from May, 1947 until the possession of the property in litigation is restored to plaintiffs;

"The mortgage on the property aforesaid in favor of Nicanor Jacinto is declared cancelled and the claim of the said intervenor is hereby dismissed;

"The claim of the intervenor Republic of the Philippines is ordered dismissed;

"Defendant's counterclaim is dismissed.

"Costs against defendant."

Copy of the decision was received by petitioner on May 11, 1950, and before the expiration of the period to appeal, or on May 25, 1950, the plaintiffs, now respondents, filed a motion asking that, notwithstanding the appeal interposed by petitioner, an order of execution be issued as regards that part of the judgment which orders the petitioner to pay the respondents the sum of P3,375 a month from May, 1947, until the possession of the property in litigation is restored to them. Petitioner objected to this motion, but, on June 22, 1950, the court granted the motion stating, among other things, that counsel for petitioner did not deny that petitioner may cease to exist before the final termination of this case in the appellate court, and that petitioner "submitted itself voluntarily to the jurisdiction of this court by filing its answer to the complaint and appearing at the trial without questioning the jurisdiction of the court." Petitioner filed a motion for reconsideration, and the same having been denied, it instituted the present proceedings imputing abuse of discretion to his Honor, the respondent Judge.

The basic issue involved in this case is whether the respondent Judge in the exercise of his discretion and before the expiration of the period to appeal may issue a writ of execution upon the special reason that the party against which the judgment was rendered will cease to exist before the final termination of the case in the appellate court.

The law under which the respondent Judge issued the disputed writ of execution is section 2, Rule 39 of the Rules of Court, which provides:

"SEC. 2. Execution discretionary,—Before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party with notice to the adverse party, upon good reasons to be stated in a special order. If a record on appeal is filed thereafter, the special order shall be included therein. Execution issued before the expiration of the time to appeal may be stayed upon the approval by the court of a sufficient supersedeas bond filed by the appellant, conditioned for the performance of the judgment or order appealed from in case it be affirmed wholly or in part."

As may be seen, before the expiration of the time to appeal, execution may issue, in the discretion of the court, on motion of the prevailing party and with notice to the adverse party, upon good reasons to be stated in the order. The rule allows the issuance of a writ of execution pending appeal provided that there exist good reasons

justifying it. What constitutes a good reason, the rule leaves it to the discretion of the court. In this particular instance, the respondent Judge considered as good reason the fact that the petitioner, Philippine Alien Property Administration, may cease to exist or to function in the Philippines before the final termination of the case in the appellate court, and so he found it necessary to issue the writ to enable the respondents to collect from petitioner the rents which according to the decision they are entitled to should the same be affirmed by the appellate court. Now, we ask, is this reason valid and tenable within the meaning of the rule?

Apparently the reason advanced by the Court of origin in issuing the writ of execution as regards the payment of damages is justifiable, considering that its purpose is to enable the respondents to collect from petitioner the rents to which they are entitled in case the decision is affirmed by the appellate court, which matter is solely addressed to the discretion of the court. However, we find the Action taken legally untenable considering certain fundamental principles which can not be disregarded, one of which is the immunity of the United States Government from suit unless it gives its express consent thereto. If the order is entertained as we are urged, its ultimate effect would be to allow the United States Government to be sued without its consent, because its main purpose is to enforce that part of the judgment regarding damages which is disputed because of the alleged lack of jurisdiction of the court to entertain it. It is true that this question is involved in the case on the merits, which is now pending appeal, but the same cannot be brushed aside in this proceedings because of the inescapable fact that on that fundamental issue hinges the determination of this incident. In other words, it is imperative to determine if the issuance of the writ of execution is proper even if the respondent Judge finds good reason justifying such action considering the fact that the party against which the writ is to be enforced is an agency of the government of the United States.

It is well settled that a suit against the Alien Property Custodian and the Attorney General of the United States involving vested property under the Trading with the Enemy Act, as amended, is in substance a suit against the United States. On the same principle it may be said that a suit against the Philippine Alien Property Administration involving vested properties located in the Philippines is a suit against the United States. And as a corollary, we may say that in order that respondents may prosecute and maintain an action against the Philippine Alien Property Administration respecting properties located in the Philippines, they must first show that congressional consent has been given by the United States to such suit and that they have complied with the terms and conditions of such consent. Failure to make such showing will inevitably result in the dismissal of the case. (*Syquia vs. Gen. Moore et al.*, 84 Phil., 312; *Marvel Building Corp. vs. War Damage Commission*, 85 Phil., 27; *Marquez Lim vs. Nelson et al.*, 87 Phil., 328).

Petitioner admits consent to sue the United States in proper cases through the Philippine Alien Property Administration in the courts of justice in the Philippines has been granted. Such consent is found in section 3 of the Philippine Property Act of 1946. And we presume that the action that has given rise to this incident was instituted under the provisions of said section 3, and it is one of those authorized under the Trading with the Enemy Act, as amended, [section 9 (a)], which refers to actions instituted by the persons who are neither enemies nor allies of enemies for the purpose of establishing their right, title or interest in vested properties, and of recovering their ownership and possession.

But it should be noted that the relief granted to a person to claim enemy property which has been vested by the Philippine Alien Property Administration is only limited to those expressly provided for in the Trading with the Enemy Act, as amended, which does not include a suit for damages for the use of the property vested by the Philippine Alien Property Administration. Paragraph 4 of section 7(c) of said Act is very expressive on this point. This is also apparent from an examination of the provisions of section 9 (a) of said Act. Nowhere under said section 9 (a), nor under any other provisions of the Trading with the Enemy Act can we find any authorization to

sue the United States Government to recover damages such as the case under consideration. This is a different cause of action to which congressional consent has not been given by the law.

One case which illustrates the difference we have just pointed out and which bears a striking similarity to the one under consideration is *Von Brunning vs. Sutherland*, 29 F. (2d), 631, the facts of which as found by the court are:

"It appears from the allegations of the plaintiff's bill of complaint that plaintiff was a natural-born citizen of the United States, who prior to April 6, 1917, intermarried with on Adolph von Brunning¹, a German subject, and thereby acquired and has since retained German citizenship. In the year 1917, and at all times subsequent thereto, plaintiff was the owner of a life estate in a certain house and lot at 1758 N Street N.W., Washington, D.C., and in July 1918, the Alien Property Custodian, having determined that plaintiff was an alien enemy under the Trading with the Enemy Act, seized the premises, and retained the custody thereof for a period of 28 months; whereupon, in November, 1920, the Custodian returned the property to plaintiff under the amendment to the Trading with the Enemy Act, approved June 5," 1920 (chapter 241, 41, Stat., 977), and again amended (Chapter 285, 42 Stat. 1511).

"It is charged by plaintiff that, during the occupation of the premises by the Custodian, the house after having been altered for such purposes, was used for departmental offices, or as a bureau by the Custodian, and that thereby the property was damaged to the extent approximately of \$6,000, and was unrepaired when it was returned to plaintiff; also that the rental value of the property during this period was not less than \$500 per month, whereas the Custodian fixed the same at \$100 per month, and upon the return of the property paid plaintiff \$900, and no more, although the property was occupied by the custodian for the period of 28 months; and that no part of the damages aforesaid, nor of the balance due upon rent, has since been paid by the Custodian. The plaintiff prayed that the court should ascertain and fix the amount due her for the use of the buildings by the Custodian, and fix the damages sustained by the property as aforesaid, and enter a decree against the Custodian and the Treasurer of the United States therefor.

"The bill of complaint was met by a motion of defendants praying that it be dismissed on the ground that it sought to recover upon an obligation alleged to be owing to the plaintiff by the United States, and that the United States had not consented that it or any of its officers might be sued in such case, and also the plaintiff had not stated facts sufficient to entitle her to equitable relief by decree of the lower court under the Trading with the Enemy Act, as amended or otherwise. The lower court sustained this motion, and dismissed the bill." (pp. 631-632).

Upon the foregoing facts, the Court of Appeals of the District of Columbia made the following findings:

"We think this ruling correct. Section 9(a) of the Trading with the Enemy Act as amended provides, among other things, that any person, not an enemy or ally of enemy claiming any interest, right or title in any property which may have been seized by the Alien Property Custodian and held by him under the act, may institute a suit in equity in the Supreme Court of the District of Columbia, to establish the interest, right, or title so claimed, and, if so established, the court shall order the conveyance or transfer to the claimant of the property so held by the Custodian, or the interest therein to which the court shall determine the claimant to be entitled. This is the only suit authorized by section 9 of the act, and the sole remedy afforded by it is the return of the seized property in proper case to the claimant.

"* * * The relief sought by her is a judgment for debt and damages for the use of her property and injury to it while it was in the custody of the Custodian. This is an essentially different cause of action, and is not authorized by the act.

"Such a suit is in effect a suit against the United States, and cannot be sustained without permission first given by the United States.* * *" (p. 632).

Considering the striking similarity between the present case the *Von Brunning* case, and it appearing that the latter

case was considered a cause of action different from the claim for the return of the same properties and for that reason it was dismissed because it was not authorized by the Trading with the Enemy Act, a fortiori, the claim for damages in the present case should be regarded in the same light and should be likewise disregarded as having been presented without the previous consent of the United States Government. We see, therefore, no valid reason to justify the view taken by the respondent Judge.

We do not find merit in the claim that petitioner has waived its objection to the jurisdiction of the court simply because it failed to file a motion to dismiss impugning the court's jurisdiction over its person, or because it failed to object to the presentation of the evidence presented by respondents to substantiate their claim for damages. In the first place, petitioner could not have properly filed a motion to dismiss as contended because the government of the United States has expressly consented to be sued for the recovery of the property in question by virtue of the express authorization given to it by the Trading with the Enemy Act, so that the only thing petitioner could do was to object to the court's jurisdiction with respect to the claim for damages, which is exactly what it did when it challenged the jurisdiction of the court with regard to said claim for damages. And, in the second place, petitioner could not have properly waived such objection, even if it wanted to, in view of the principle that only the Congress of the United States may waive the immunity from suits given to the United States government. On this matter, it has been held that neither the President of the United States, nor petitioner, nor any of their subordinate officers can give the required consent to be sued, and so neither can waive nor withdraw such consent. This is the sole function of Congress. (*Carr. vs. U.S.* 98 U.S. 433; *Minnesota vs. U.S.* 305 U.S. 386; *U.S. vs. Shaw*, 309 U.S. 501).

Another aspect that should be considered is the effect of the writ of execution on the property against which it is to be enforced. If the purpose is to enforce it against the moneys or properties vested by the petitioner, then it cannot be legally done, for under section 9 (f) of the Trading with the Enemy Act, such property is exempt from attachment, garnishment, execution or from any lien whatsoever. The only exception to this privilege refers to properties acquired during the first world war (section 30) or to those intended to be returned to non-residents if action is taken before the intention to return is revoked, section 32 (f), and the reason behind such coercive measure is evidently to give American creditors an opportunity to attach them before they are taken out of the jurisdiction of the court. The present case does not come within the exception. This is another reason why the writ of execution cannot be maintained.

Wherefore, the order of the court of origin dated June 22, 1950, as well as its order of July 20, 1950, denying petitioner's motion for reconsideration, are hereby set aside and rendered without effect, without pronouncement as to costs.

The preliminary injunction issued is hereby declared final.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor and Jugo, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.