

**JRS BUSINESS CORPORATION AND JOSE R. DA SILVA, PETITIONERS,
VS. THE HONORABLE AGUSTIN P. MONTESA, JUDGE OF THE COURT
OF FIRST INSTANCE OF MANILA, AND THE IMPERIAL INSURANCE,
INC...***G.R. No. L-23783. April 25, 1968*

Ponente: FERNANDO, J.

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This present petition for mandamus with preliminary mandatory injunction against the then respondent Judge, now retired, Agustin P. Montesa, of the Court of First Instance of Manila, has its roots in a 1964 decision of this Court.[1] Petitioners JRS Business Corporation and Jose R. Da Silva were two of the petitioners in the above proceeding. The principal respondent in this petition, Imperial Insurance, Inc., had a similar role therein.

As set forth in the opening paragraph of the decision then rendered: "Petitioner J. R. Da Silva, is the President of the J.R.S. Business Corporation, an establishment duly franchised by the Congress of the Philippines, to conduct a messenger and delivery express service. On July 12, 1961, the respondent, Imperial Insurance, Inc., presented with the CFI of Manila a complaint * * *, for a sum of money against the petitioner corporation. After the defendants therein have submitted their Answer, the parties entered into a Compromise Agreement, assisted by their respective counsels, * * *." [2] The compromise agreement noted an indebtedness of petitioners, as defendants, in the amount of P61,172.32, an obligation, joint and several in character, and contained a promise to pay to then plaintiff, respondent Imperial Insurance, Inc., such amount within sixty (60) days from March 16, 1962 or, on or before May 14, 1962. The failure for any reason to pay in full such amount on that date would entitle respondent Imperial Insurance, Inc., as plaintiff, "to move for the execution of the decision to be rendered" based on such compromise agreement. Then came, on March 17, 1962, the lower court decision embodying the contents of the aforesaid compromise agreement, the dispositive portion thereof reading: "WHEREFORE, the Court hereby approves the above-quoted compromise agreement and renders judgment in accordance therewith, enjoining the parties to comply faithfully and strictly with the terms and conditions thereof, without special pronouncement as to costs."

One day after the failure to pay such judgment debt, on May 15, 1962, respondent Imperial Insurance, Inc. filed a motion for the issuance of a writ of execution. On May 23, 1962, a writ of execution was issued by the Sheriff of Manila, the auction sale being set for June 21, 1962. As noted in the 1964 decision of this Court: "In the sale which was conducted in the premises of the JRS Business Corporation at 1341 Perez St., Paco, Manila, all the properties of said corporation contained in the Notices of Sale dated May 26, 1962, and June 2, 1962 (the latter notice being for the whole capital stocks of the defendant, JRS Business Corporation, the business name, right of operation, the whole assets, furnitures and equipments, the total liabilities and Net Worth, books of accounts, * * *), were bought by respondent Imperial Insurance, Inc., for P10,000.00, which was the highest bid offered. Immediately after the sale, respondent Insurance Company took possession of the properties and started running the affairs and operating the business of the JRS Business Corporation."

That was the background for that previous certiorari proceeding, the main question raised being whether the business name or trade name, franchise and capital stocks of the then petitioner JRS Business Corporation were properties or property rights which could be the subject of levy, execution and sale?

This Court in its 1964 decision answered in the negative. It made clear why: "The compromise agreement and the judgment based thereon, do not contain any special decree or order making the franchise answerable for the judgment debt. The same thing may be stated with respect to petitioner's trade name or business name and its capital stock. Incidentally, the trade name or business name corresponds to the initials of the President of the petitioner corporation and there can be no serious dispute regarding the fact that a trade name or business name and capital stock are necessarily included in the enjoyment of the franchise. Like that of a franchise, the law mandates, that property necessary for the enjoyment of said franchise, can only be sold to satisfy a judgment debt if the decision especially so provides. As we have stated heretofore, no such directive appears in the decision. Moreover, a trade name or business name cannot be sold separately from the franchise and the capital stock of the petitioner corporation or any other corporation, for that matter, represents the interest and is the property of stockholders in the corporation, who can only be deprived thereof in the manner provided by law * * *."

It was then the decision of the Court in that proceeding "that the inclusion of the franchise, the trade name and/or business name and the capital stock of the petitioner corporation, in the sale of the properties of the JRS Business Corporation, has no justification. The sale of the properties of petitioner corporation is SET ASIDE, in so far as it authorizes the levy and sale of its franchise, trade name and capital stocks."

The present petition for mandamus with preliminary mandatory injunction is premised on the contention that respondent Judge failed to execute properly the above decision.

According to the present petition, on September 2, 1964, after the aforementioned decision became final and executory, "a certified copy of said decision had been duly transmitted by this Honorable Court to the Court of First Instance of Manila, * * *." [3] Then came "a motion for execution and an amended motion for execution, respectively, of said decision," in which the above-named petitioners prayed among other things "for the immediate return or restitution of the aforesaid franchise, trade name and capital stocks" as well as for indemnification in the amount of P132,500. [4] After such motions were heard by respondent Judge Montesa, an order was issued by him quoting the dispositive portion of the decision of this Court and emphasizing that the sale at the public auction must "conform with the above-quoted decision of the Supreme Court and nothing else." [5] Clearly, he pointed out that the writ of execution could not include anything not embodied in the decision. He admitted that he could not modify it, stressing that it is only such decision, "that must be enforced, nothing more, nothing less." He therefore enjoined "the Sheriff of Manila * * * to act accordingly in the sale of properties of defendants." He likewise disallowed the claim for damages against the then plaintiff, now respondent Imperial Insurance, Inc. [6] In pursuance of the above order of September 18, 1964, the Sheriff of Manila wrote a letter on October 2, 1964, to respondent Imperial Insurance, Inc., the highest bidder at the public auction sale then in possession of the properties of petitioner JRS Business Corporation, notifying it of the above order of respondent Judge. [7]

Then came the motion for restitution, the denial of which is the basis of the present petition, wherein after setting forth the issuance of the above order of respondent Judge of September 18, 1964 and the notice of the Sheriff of Manila in compliance of such order to respondent Imperial Insurance, Inc. that the franchise, trade name and the capital stocks of defendant JRS Business Corporation are excluded from the public auction sale, immediate restitution thereof is prayed for by present petitioners. [8] The above motion for restitution was denied by respondent Judge in an order of October 19, 1964, for lack of merit. [9]

The above denial by respondent Judge is alleged in the present petition to be a grave abuse of his discretion and a neglect as well as a refusal to perform an act specifically enjoined upon him as a duty by virtue of which mandamus, in the opinion of petitioners, is the proper remedy.[10] Petitioners likewise sought a preliminary mandatory injunction in order allegedly to prevent further injury to them.[11] This Court did not issue a preliminary mandatory injunction.

In the answer of respondents, which was joined by petitioner JRS Business Corporation, having come under a different management after such public auction sale, there was an admission of respondent Judge Montesa issuing an order of September 18, 1964 directing the Sheriff of Manila to act in accordance with the decision of this Court of July 31, 1964, as well as of the step taken by the Sheriff of Manila in a communication of October 2, 1964, to respondent Imperial Insurance, Inc. notifying it of such order with the qualification "that petitioner JRS Business Corporation has always been in possession of its franchise, trade-name and capital stock and respondent Imperial Insurance, Inc. was never in possession thereof. That the respondent Imperial Insurance, Inc. actually purchased on the public auction sale of the Sheriff of Manila were, among other things, "the rights, interests and participation of the herein petitioner Jose R. Da Silva in the JRS Business Corporation. The decision of this Honorable Court in G. R. No. L-19891 does not set aside the sale of the rights, interests and participation of the herein petitioner Jose R. Da Silva in the JRS Business Corporation." [12]

Further, the denial of the motion for restitution of petitioner Da Silva was in the answer alleged to be "fully justified since respondent Imperial Insurance, Inc. never took actual or physical custody and possession thereof and petitioner Jose R. Da Silva lost his rights, interests and participation therein." [13] It is the stand therefore of respondents that mandamus does not lie in the present case, petitioner Da Silva not being excluded from any lawful right resulting from a failure of respondent Judge Montesa to comply with the duty specifically enjoined upon him by law. Respondents likewise denied liability for any alleged actual or moral damages, as well as for attorney's fees. The prayer is for the dismissal of the petition.

Mandamus does not lie, and the petition must be dismissed. With petitioner JRS Business Corporation having joined in the answer filed by respondents, the sole petitioner, in effect, is Jose R. Da Silva, whose rights, if any, in this present petition, are traceable to the decision of this Court of July 31, 1964. It is quite categorical; its dispositive portion reads thus: "The sale of the properties of petitioner corporation is SET ASIDE, in so far as it authorizes the levy and sale of its franchise, trade name and capital stocks." The winning party clearly is the JRS Business Corporation, the franchise, trade name and capital stocks of which were held as not being included in the sale at public auction.

As admitted in the petition, the above decision was, by virtue of the writ of execution filed by petitioners, carried out. Such order in part reads: "The sale at public auction of the properties of the petitioner must, therefore, conform with the above-quoted decision of the Supreme Court and nothing else. The writ of execution can not include anything not embodied in the decision rendered by this Court. It can not modify the said decision. It is only the said decision that must be enforced, nothing more, nothing less." [14]

What is even more decisive insofar as petitioner Jose R. Da Silva's plea is concerned is the undeniable fact that the right recognized in the 1964 decision of this Court is a right appertaining to the JRS Business Corporation. The decision is silent as to any alleged right of petitioner Jose R. Da Silva, which might have been mistakenly included in the public auction sale. Such being the case, there is no clear legal right that he could invoke, which could have been the basis of a motion for restitution, the denial of which would have given rise to a petition for mandamus.

Mandamus is the proper remedy if it could be shown that there was neglect on the part of a tribunal in the

performance of an act, which specifically the law enjoins as a duty or an unlawful exclusion of a party from the use and enjoyment of a right to which he is entitled.[15] On the face of the motion for restitution, which was denied, no motion for reconsideration having been thereafter filed, the failure to perform a duty resulting from an office as well as the exclusion of petitioner Jose R. Da Silva from the use and enjoyment of a right could not be predicated. Such being the case, mandamus cannot be availed of.

According to former Chief Justice Moran, "only specific legal rights may be enforced by mandamus if they are clear and certain. If the legal rights of the petitioner are not well defined, clear, and certain, the petition must be dismissed." [16] In support of the above view, *Viuda e Hijos de Crispulo Zamora v. Wright*, [17] was cited. As was there categorically stated: "This court has held that it is fundamental that the duties to be enforced by mandamus must be those which are clear and enjoined by law or by reason of official station, and that petitioner must have a clear, legal right to the thing demanded, and that it must be the legal duty of the defendant to perform the required act." [18]

As expressed by the then Justice Recto in a subsequent opinion: "It is well established that only specific legal rights are enforceable by mandamus, that the right sought to be enforced must be certain and clear, and that the writ not issue in cases where the right is doubtful." [19] To the same effect is the formulation of such doctrine by former Justice Barrera: "Stated otherwise, the writ never issues in doubtful cases. It neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed." [20]

WHEREFORE, this petition for mandamus is denied. With-out special pronouncement as to costs.

Reyes, J.B.L., (Acting C.J.), Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.

[1] *JRS Business Corporation, J. R. Da Silva and A. J. Beltran v. Imperial Insurance, Inc., et al.*, L-19891, promulgated July 31, 1964.

[2] Decision in L-19891 of July 31, 1964.

[3] Petition, par. 5.

[4] Petition, par. 6.

[5] Petition, Annex C.

[6] Petition, par. 8 and Annex C, the Order of respondent Judge Montesa on September 18, 1964.

[7] Petition, par. 9.

[8] Petition, par. 10 and Annex E.

[9] Petition, par. 11 and Annex F.

[10] Petition, pars. 12 to 19, citing Rule 39, Section 5 of the Rules of Court as well as seeking actual damages in the sum of at least P5,000.00 a month as well as additional damages for alleged suffering due to "besmirched reputation, serious anxiety, mental anguish, social humiliation, moral shock and similar injury," the assessment of which petitioner Da Silva would leave to this Court, and attorney's fees.

[11] Petition, par. 20.

[12] Answer, par. 7.

[13] Answer, par. 9.

[14] Petition, Annex C.

[15] Rules 65, Section 3, Rules of Court.

[16] 3 Moran, Comments on the Rules of Court, 1963 ed., p. 172.

[17] 53 Phil. 613 (1929).

[18] Id., p. 621.

[19] *Sanson v. Barrios*, 63 Phil. 198, 202 (1936). Such a principle was followed subsequently in *Diokno v. Rehabilitation Finance Corp.*, 91 Phil. 608 (1952) and *Pascua v. Tuason*, L-13046, May 20, 1960.

[20] *Alzate v. Aldana*, L-18085, May 31, 1963. See also *Villegas v. Auditor General*, L-21352, November 29, 1966.

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