

THE COMMISSIONER OF PUBLIC HIGHWAYS AND THE AUDITOR GENERAL, PETITIONERS, VS. HON. LOURDES P. SAN DIEGO, AS PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH IX, S...

G.R. No. L-30098. February 18, 1970

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In this special civil action for certiorari and prohibition, the Court declares null and void the two questioned orders of respondent Court levying upon funds of petitioner Bureau of Public Highways on deposit with the Philippine National Bank, by virtue of the fundamental precept that government funds are not subject to execution or garnishment.

The background facts follow:

On or about November 20, 1940, the Government of the Philippines filed a complaint for eminent domain in the Court of First Instance of Rizal[1] for the expropriation of a parcel of land belonging to N. T. Hashim, with an area of 14,934 square meters, needed to construct a public road, now known as Epifanio de los Santos Avenue. On November 25, 1940, the Government took possession of the property upon deposit with the City Treasurer of the sum of P23,413.64 fixed by the Court therein as the provisional value of all the lots needed to construct the road, including Hashim's property. The records of the expropriation case were destroyed and lost during the second world war, and neither party took any step thereafter to reconstitute the proceedings.

In 1958, however, the estate of N. T. Hashim, deceased, through its Judicial Administrator, Tomas N. Hashim, filed a money claim with the Quezon City Engineer's Office in the sum of P522,620.00, alleging said amount to be the fair market value of the property in question, now already converted and used as a public highway. Nothing having come out of its claim, respondent estate filed on August 6, 1963, with the Court of First Instance of Rizal, Quezon City Branch, assigned to Branch IX, presided by respondent judge,[2] a complaint for the recovery of the fair market price of the said property in the sum of P672,030.00 against the Bureau of Public Highways, which complaint was amended on August 26, 1963, to include as additional defendants, the Auditor General and the City Engineer of Quezon City.[3]

The issues were joined in the case with the filing by then Solicitor General Arturo A. Alafritz of the State's answer, stating that the Hashim estate was entitled only to the sum of P3,203.00 as the fair market value of the property at the time that the State took possession thereof on November 25, 1940, with legal interest thereon at 6% per annum, and that said amount had been available and tendered by petitioner Bureau since 1958. The parties thereafter worked out a compromise agreement, respondent estate having proposed on April 28, 1966, a payment of P14.00 per sq.m. for its 14,934 sq.m.-parcel of land or the total amount of P209,076.00, equivalent to the land's total assessed value,[4] which was confirmed, ratified and approved in November, 1966 by the Commissioner of Public Highways and the Secretary of Public Works and Communications. On November 7, 1966, the

Compromise Agreement subscribed by counsel for respondent estate and by then Solicitor General Antonio P. Barredo, now a member of this Court, was submitted to the lower Court and under date of November 8, 1966, respondent judge, as prayed for, rendered judgment approving the Compromise Agreement and ordering petitioners, as defendants therein, to pay respondent estate as plaintiff therein, the total sum of P209,076.00 for the expropriated lot.

On October 10, 1968, respondent estate filed with the lower Court a motion for the issuance of a writ of execution, alleging that petitioners had failed to satisfy the judgment in its favor. It further filed on October 12, 1968, an ex-parte motion for the appointment of respondent Benjamin Garcia as special sheriff to serve the writ of execution. No opposition having been filed by the Solicitor General's office to the motion for execution at the hearing thereof on October 12, 1968, respondent judge, in an order dated October 14, 1968, granted both motions.

On the same date, October 14, 1968, respondent Garcia, as special sheriff, forthwith served a Notice of Garnishment, together with the writ of execution dated October 14, 1968, issued by respondent Manuela C. Florendo as Deputy Clerk of Court, on respondent Philippine National Bank, notifying said bank that levy was thereby made upon funds of petitioners Bureau of Public Highways and the Auditor General on deposit, with the bank to cover the judgment of P209,076.00 in favor of respondent estate, and requesting the bank to reply to the garnishment within five days. On October 16, 1968, three days before the expiration of the five-day deadline, respondent Benjamin V. Coruña in his capacity as Chief, Documentation Staff, of respondent bank's Legal Department, allegedly acting in excess of his authority and without the knowledge and consent of the Board of Directors and other ranking officials of respondent bank, replied to the notice of garnishment that in compliance therewith, the bank was holding the amount of P209,076.00 from the account of petitioner Bureau of Public Highways. Respondent bank alleged that when it was served with Notice to Deliver Money signed by respondent Garcia, as special sheriff, on October 17, 1968, it sent a letter to the officials of the Bureau of Public Highways notifying them of the notice of garnishment.

Under date of October 16, 1968, respondent estate further filed with the lower Court an ex-parte motion for the issuance of an order ordering respondent bank to release and deliver to the special sheriff, respondent Garcia, the garnished amount of P209,076.00 deposited under the account of petitioner Bureau, which motion was granted by respondent judge in an order of October 18, 1968. On the same day, October 18, 1968, respondent Coruña, allegedly taking advantage of his position, authorized the issuance of a cashier's check of the bank in the amount of P209,076.00, taken out of the funds of petitioner Bureau deposited in current account with the bank and paid the same to respondent estate, without notice to said petitioner.

Later on December 20, 1968, petitioners, through then Solicitor General Felix V. Makasiar, wrote respondent bank complaining that the bank acted precipitately in having delivered such a substantial amount to the special sheriff without affording petitioner Bureau a reasonable time to contest the validity of the garnishment, notwithstanding the bank's being charged with legal knowledge that government funds are exempt from execution or garnishment, and demanding that the bank credit the said petitioner's account in the amount of P209,076.00, which the bank had allowed to be illegally garnished. Respondent bank replied on January 6, 1969 that it was not liable for the said garnishment of government funds, alleging that it was not for the bank to decide the question of legality of the garnishment order and that much as it wanted to wait until it heard from the Bureau of Public Highways, it was "helpless to refuse delivery under the teeth" of the special order of October 18, 1968, directing immediate delivery of the garnished amount.

Petitioners therefore filed on January 28, 1969 the present action against respondents, in their capacities as above stated in the title of this case, praying for judgment declaring void the questioned orders of respondent Court. Petitioners also sought the issuance of a writ of preliminary mandatory injunction for the immediate

reimbursement of the garnished sum of P209,076.00, constituting funds of petitioner Bureau on deposit with the Philippine National Bank as official depository of Philippine Government funds, to the said petitioner's account with the bank, so as to forestall the dissipation of said funds, which the government had allocated to its public highways and infrastructure projects. The Court ordered on January 31, 1969 the issuance of the writ against the principal respondents solidarily, including respondent judge therein so that she would take forthwith all the necessary measures and processes to compel the immediate return of the said government funds to petitioner Bureau's account with respondent bank.[5]

In compliance with the writ, respondent bank restored the garnished sum of P209,076.00 to petitioner Bureau's account with it.[6] The primary responsibility for the reimbursement of said amount to petitioner Bureau's account with respondent bank, however, rested solely on respondent estate, since it is the judgment creditor that received the amount upon the questioned execution.

Strangely enough, as appears now from respondent bank's memorandum in lieu of oral argument[7], what respondent bank did, acting through respondent Coruña as its counsel, was not to ask respondent estate to reimburse it in turn in the same amount, but to file with the probate court with jurisdiction over respondent estate[8], a motion for the estate to deposit the said amount with it, purportedly in compliance with the writ. Respondent estate there-upon deposited with respondent bank as a savings account the sum of P125,446.00, on which the bank presumably would pay the usual interest, besides. As to the balance of P83,630.00, this sum had been in the interval paid as attorney's fees to Atty. Jesus B. Santos, counsel for the estate, by the administrator, allegedly without authority of the probate court.[9] Accordingly, respondent estate has not reimbursed the respondent bank either as to this last amount, and the bank has complacently not taken any steps in the lower court to require such reimbursement.

The ancillary questions now belatedly raised by the State may readily be disposed of. Petitioners may not invoke the State's immunity from suit, since the case below was but a continuation in effect of the pre-war expropriation proceedings instituted by the State itself. The expropriation of the property, which now forms part of Epifanio de los Santos Avenue, is a *fait accompli* and is not questioned by respondent estate. The only question at issue was the amount of the just compensation due to respondent estate in payment of the expropriated property, which properly pertained to the jurisdiction of the lower court.[10] It is elementary that in expropriation proceedings, the State precisely submits to the Court's jurisdiction and asks the Court to affirm its lawful right to take the property sought to be expropriated for the public use or purpose described in its complaint and to determine the amount of just compensation to be paid therefor.

Neither may the State impugn the validity of the compromise agreement executed by the Solicitor General on behalf of the State with the approval of the proper government officials, on the ground that it was executed only by the lawyer of respondent estate, without any showing of having been specially authorized to bind the estate thereby, because such alleged lack of authority may be questioned only by the principal or client, and respondent estate as such principal has on the contrary confirmed and ratified the compromise agreement.[11] As a matter of fact, the Solicitor General, in representation of the State, makes in the petition no prayer for the annulment of the compromise agreement or of the respondent court's decision approving the same.

On the principal issue, the Court holds that respondent Court's two questioned orders (1) for execution of the judgment, in pursuance whereof respondent deputy clerk issued the corresponding writ of execution and respondent special sheriff issued the notice of garnishment, and (2) for delivery of the garnished amount of P209,076.00 to respondent estate as judgment creditor through respondent special sheriff, are null and void on the fundamental ground that government funds are not subject to execution or garnishment.

1. As early as 1919, the Court has pointed out that although the Government, as plaintiff in expropriation proceedings, submits itself to the jurisdiction of the Court and thereby waives its immunity from suit, the judgment that is thus rendered requiring its payment of the award determined as just compensation for the condemned property as a condition precedent to the transfer to the title thereto in its favor, cannot be realized upon execution.[12] The Court there added that it is incumbent upon the legislature to appropriate any additional amount, over and above the provisional deposit, that may be necessary to pay the award determined in the judgment, since the Government cannot keep the land and dishonor the judgment.

In another early case, where the government by an act of the Philippine Legislature, expressly consented to be sued by the plaintiff in an action for damages and waived its immunity from suit, the Court adjudged the Government as not being legally liable on the complaint, since the State under our laws would be liable only for torts caused by its special agents, specially commissioned to carry out the acts complained of outside of such agents' regular duties. We held that the plaintiff would have to look to the legislature for another legislative enactment and appropriation of sufficient funds, if the Government intended itself to be legally liable only for the damages sustained by plaintiff as a result of the negligent act of one of its employees.[13]

The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action "only up to the completion of proceedings anterior to the stage of execution" and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.

Thus, as pointed out by the Court in *Belleng vs. Republic*[14], while the State has given its consent to be sued in compensation cases, the pauper-claimant therein must look specifically to the Compensation Guarantee Fund provided by the Workmen's Compensation Act for the corresponding disbursement in satisfaction of his claim, since the State in Act 3083, the general law waiving its immunity from suit "upon any money claim involving liability arising from contract express or implied", imposed the limitation in Sec. 7 thereof that "no execution shall issue upon any judgment rendered by any Court against the Government of the (Philippines) under the provisions of this Act"; and that otherwise, the claimant would have to prosecute his money claim against the State under Commonwealth Act 327.

This doctrine was again stressed by the Court in *Republic vs. Palacio*[15], setting aside as null and void the order of garnishment issued by the sheriff pursuant to the lower Court's writ of execution on funds of the Pump Irrigation Trust Fund in the account of the Government's Irrigation Service Unit with the Philippine National Bank. The Court emphasized then and re-emphasizes now that judgments against the State or its agencies and instrumentalities in cases where the State has consented to be sued, operate merely to liquidate and establish the plaintiff's claim; such judgments may not be enforced by writs of execution or garnishment and it is for the legislature to provide for their payment through the corresponding appropriation, as indicated in Act 3083.

2. Respondent bank and its Chief, Documentation Staff, respondent Coruña, have advanced two specious arguments to justify their wrongful delivery of the garnished public funds to respondent estate. Their first contention that the said government funds by reason of their being deposited by petitioner Bureau under a current account subject to withdrawal by check, instead of being deposited as special trust funds, "lost their kind and character as government funds", [16] is untenable. As the official depository of the Philippine Government, respondent bank and its officials should be the first ones to know that all government funds deposited with it by

any agency or instrumentality of the government, whether by way of general or special deposit, remain government funds, since such government agencies or instrumentalities do not have any non-public or private funds of their own.

Their second contention that said government funds lost their character as such "the moment they were deposited with the respondent bank",^[17] since the relation between a depositor and a depository bank is that of creditor and debtor, is just as untenable, absolutely. Said respondents shockingly ignore the fact that said government funds were deposited with respondent bank as the official depository of the Philippine Government. Assuming for the nonce the creation of such relationship of creditor and debtor, petitioner Bureau thereby held a credit against respondent bank whose obligation as debtor was to pay upon demand of said petitioner-creditor the public funds thus deposited with it; even though title to the deposited funds passes to the bank under this theory since the funds become mingled with other funds which the bank may employ in its ordinary business, what was garnished was not the bank's own funds but the credit of petitioner bureau against the bank to receive payment of its funds, as a consequence of which respondent bank delivered to respondent estate the garnished amount of P209,076.00 belonging to said petitioner. Petitioner bureau's credit against respondent bank thereby never lost its character as a credit representing government funds thus deposited. The moment the payment is made by respondent bank on such deposit, what it pays out represents the public funds thus deposited which are not garnishable and may be expended only for their legitimate objects as authorized by the corresponding legislative appropriation. Neither respondent bank nor respondent Coruña are the duly authorized disbursing officers and auditors of the Government to authorize and cause payment of the public funds of petitioner Bureau for the benefit of private persons, as they wrongfully did in this case.

3. Respondents bank and Coruña next pretend that refusal on their part to obey respondent judge's order to deliver the garnished amount, "which is valid and binding unless annulled, would have exposed them for contempt of court."^[18] They make no excuse for not having asked the lower court for time and opportunity to consult petitioner Bureau or the Solicitor General with regard to the garnishment and execution of said deposited public funds which were allocated to specific government projects, or for not having simply replied to the sheriff that what they held on deposit for petitioner Bureau were non-garnishable government funds. They have not given any cogent reason or explanation, -- charged as they were with knowledge of the nullity of the writ of execution and notice of garnishment against government funds, for in the earlier case of *Republic vs. Palacio*, *supra*, they had then prudently and timely notified the proper government officials of the attempted levy on the funds of the Irrigation Service Unit deposited with it, thus enabling the Solicitor General to take the corresponding action to annul the garnishment -- for their failure to follow the same prudent course in this case. Indeed, the Court is appalled at the improper haste and lack of circumspection with which respondent Coruña and other responsible officials of respondent bank precipitately allowed the garnishment and delivery of the large amount involved, all within the period of just four days, even before the expiration of the five-day reglementary period to reply to the sheriff's notice of garnishment. Failure on the State's part to oppose the issuance of the writ of execution, which was patently null and void as an execution against government funds, could not relieve them of their own responsibility.

4. Respondents bank and Coruña further made common cause with respondent estate beyond the legal issues that should solely concern them, by reason of their having wrongfully allowed the garnishment and delivery of government funds, instead assailing petitioners for not having come to court with "clean hands" and asserting that in fairness, justice and equity, petitioners should not impede, obstruct or in any way delay the payment of just compensation to the land owners for their property that was occupied way back in 1940. This matter of payment of respondent estate's judgment credit is of no concern to them as custodian and depository of the public funds deposited with them, whereby they are charged with the obligation of assuring that the funds are not illegally or

wrongfully paid out.

Since they have gone into the records of the expropriation case, then it should be noted that they should have considered the vital fact that at the time that the compromise agreement therein was executed in November, 1966, respondent estate was well aware of the fact that the funds for the payment of the property in the amount of P209,076.00 still had to be released by the Budget Commissioner and that at the time of the garnishment, respondent estate was still making the necessary representations for the corresponding release of such amount, pursuant to the Budget Commissioner's favorable recommendation.[19] And with regard to the merits of the case, they should have likewise considered that respondent estate could have no complaint against the fair attitude of the authorities in not having insisted on their original stand in their answer that respondent estate was entitled only to the sum of P3,203.00 as the fair market value of the property at the time the State took possession thereof on November 25, 1940, with legal interests thereon, but rather agreed to pay therefor the greatly revised and increased amount of P209,076.00 at P14.00 per square meter, not to mention the consequential benefits derived by said respondent from the construction of the public highway with the resultant enhanced value of its remaining properties in the area.

5. The manner in which respondent bank's counsel and officials proceeded to comply with the writ of preliminary mandatory injunction issued by the Court commanding respondent estate, its judicial administrator and respondents bank and Coruña, in solidum, to reimburse forthwith the account of petitioner Bureau in the garnished amount of P209,076.00, does not speak well of their fidelity to the bank's interests. For while respondent bank had restored with its own funds the said amount of P209,076.00 to petitioner Bureau's account, it has not required respondent estate as the party primarily liable therefor as the recipient of the garnished amount to reimburse it in turn in this same amount. Rather, said bank officials have allowed respondent estate to keep all this time the whole amount of P209,076.00 wrongfully garnished by it. For as stated above, respondent bank allowed respondent estate merely to deposit with it as a savings account, of respondent estate, the lesser sum of P125,446.00 on which the bank presumably has paid and continues paying respondent estate, besides the usual interest rates on such savings accounts, and neither has it taken any steps to require reimbursement to it from respondent estate of the remainder of P83,630.00 which respondent estate of its own doing and responsibility paid by way of attorney's fees.

It thus appears that all this time, respondent bank has not been reimbursed by respondent estate as the party primarily liable for the whole amount of P209,076.00 wrongfully and illegally garnished and received by respondent estate. This grave breach of trust and dereliction of duty on the part of respondent bank's officials should be brought to the attention of respondent bank's Board of Directors and management for the appropriate administrative action and other remedial action for the bank to recover the damages it has been made to incur thereby.

6. The Solicitor General has likewise questioned the legality of respondent Court's Order of October 14, 1968, appointing respondent Garcia as "special sheriff" for the purpose of effecting service of the writ of execution, simply on respondent estate's representation that it was desirable "for a speedy enforcement of the writ."

The Court finds this general practice of the lower courts of appointing "special sheriffs" for the service of writs of execution to be unauthorized by law. The duty of "executing all processes" of the courts in civil cases, particularly, writs of execution, devolves upon the sheriff or his deputies, under Section 183 of the Revised Administrative Code and Rule 39, section 8 of the Rules of Court. Unlike the service of summons which may be made, aside from the sheriff or other proper court officers, "for special reasons by any person especially authorized by the judge of the court issuing the summons" under Rule 14, section 5 of the Rules of Court, the law requires that the responsibility of serving writs of execution, which involve the taking delivery of money or

property in trust for the judgment creditor, should be carried out by regularly bonded sheriffs or other proper court officers. (Sections 183 and 330, Revised Administrative Code). The bond required by law of the sheriff is conditioned inter alia, "for the delivery or payment to the Government, or the persons entitled thereto, of all the property or sums of money that shall officially come into his or their (his deputies') hands" (Section 330, idem), and thus avoids the risk of embezzlement of such properties and moneys.

Section 185 of the Revised Administrative Code restrictively authorizes the judge of the Court issuing the process or writ to deputize some suitable person only "when the sheriff is party to any action or proceeding or is otherwise incompetent to serve process therein." The only other contingency provided by law is when the office of sheriff is vacant, and the judge is then authorized, "in case of emergency, (to) make a temporary appointment to the office of sheriff ... pending the appointment and qualification of the sheriff in due course; and he may appoint the deputy clerk of the court or other officer in the government service to act in said capacity." (Section 189, idem).

None of the above contingencies having been shown to be present, respondent Court's order appointing respondent Garcia as "special sheriff" to serve the writ of execution was devoid of authority.

7. No civil liability attaches, however, to respondents special sheriff and deputy clerk, since they acted strictly pursuant to orders issued by respondent judge in the discharge of her judicial functions as presiding judge of the lower court, and respondent judge's 'immunity from civil responsibility covers them, although the said orders are herein declared null and void.[20]

ACCORDINGLY, the writs of certiorari and prohibition are granted. The respondent court's questioned Orders of October 14, and 18, 1968, are declared null and void, and all further proceedings in Civil Case No. Q-7441 of the Court of First Instance of Rizal, Quezon City, Branch IX are abated. The writ of preliminary mandatory injunction heretofore issued is made permanent, except as to respondent judge who is excluded therefrom, without prejudice to any cause of action that private respondents may have, inter se. Respondent estate and respondent Tomas N. Hashim as prayed for by respondent Philippine National Bank in its Answer, are ordered jointly and severally to reimburse said respondent bank in the amount of P209,076.00 with legal interest until the date of actual reimbursement. Respondents Estate of N. T. Hashim, Philippine National Bank and Benjamin Coruña are ordered jointly to pay treble costs.

The Clerk of Court is directed to furnish copies of this decision to the Board of Directors and to the president of respondent Philippine National Bank for their information and appropriate action.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, and Villamor, JJ., concur.

Barredo, J., took no part.

[1] Civil Case No. 7906, entitled Commonwealth of the Philippines vs. N. T. Hashim.

[2] Now Associate Justice of the Court of Appeals.

[3] Civil Case No. Q-7441, entitled Testate Estate of N. T. Hashim vs. the Auditor General, et al.

[4] Amended Complaint, par. 16, Annex A of Petition.

[5] Resolution of April 16, 1969.

[6] PNB Manifestation dated February 11, 1969.

[7] Filed on April 14, 1969.

[8] Court of First Instance of Manila, Sp. Proc. No. 71131, entitled "Testate Estate of N. T. Hashim, deceased, Tomas N. Hashim, administrator."

[9] Respondent heir Jose Hashim's "Motion to Resolve Petition" of November 10, 1969.

[10] R. A. 296, Section 44; Rule 67, Rules of Court.

[11] Article 1901, Civil Code.

[12] Visayan Refining Co. vs. Camas & Paredes, 40 Phil. 550, 562 (Dec. 3, 1919). Vide Director of Commerce vs. Concepcion, 43 Phil. 384 (May 22, 1922).

[13] Merritt vs. Government of P.I., 34 Phil. 311, (March 21, 1916).

[14] L-19856, Nov. 16, 1963 (9 SCRA 6).

[15] L-20322, May 29, 1968, 23 SCRA 899.

[16] Rollo, p. 248.

[17] Id, p. 88.

[18] Rollo, p. 126.

[19] Respondent Estate's Answer, par. 11, Rollo, p. 132; Annexes 2 and 3 thereof.

[20] Alsua vs. Johnson, 21 Phil. 308.

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