

NAMARCO, PETITIONER, VS. HONORABLE JUDGE HIGINIO B. MACADAEG, OF THE COURT OF FIRST INSTANCE OF MANILA AND KHO KDN COMMERCIAL, RESPONDENTS.

G.R. No. L-10030. January 18, 1956

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is a special civil action of prohibition and certiorari against the Court of First Instance of Manila, Honorable Higinio B. Macadaeg, presiding, to prohibit said court from taking cognizance of Special Proceedings No. 27836, entitled Kho Kun Commercial, petitioner, vs. the Manager of the NAMAECO, and to annul. the writ of preliminary injunction granted by the court against the petitioner herein. The facts giving rise to the action may stated as follows:

In said case No. 27836, Kho Kun Commercial seeks to prevent the NAMAECO from selling to the public two shipments of garlic alleged to belong to the petitioner, in order to allow it to redeem said shipments in accordance with the authorization the President of the Philippines through the Executive Secretary, The shipment arrived in the Philippines on June 20 and July 21, 1955. On September 1955, the President of the Philippines, through the Executive Secretary, approved the recommendation of the Secretary of Finance allowing the redemption of the said shipments subject to the condition that "no offer higher than the redemption price is received therefor at the public auction." This order was modified upon recommendation of the Secretary of Finance in the following manner: the first shipment may be redeemed at the appraised value of the importation and the second shipment, "if no offer higher than the redemption price is received therefor at the public auction," although "the importer may be given an opportunity to equal the b price offered at the public auction." The order of the President was foll resolution of the Cabinet approved on October 5, 1955, which directed that garlic shipments be seized and forfeited and then turned over by the Commissioner of Customs to the NAMARCO (National Marketing Corporation) for gale to the consuming public.

Case No. 27836 was presented by the Kho Kun Commercial in the Court of First Instance of Manila to prevent the sale of the garlic to the public and to redemption by the importer, the petitioner. It is claimed in the action that the decision of the Cabinet is illegal and null and void as contrary to existing and that the Commissioner of Customs has the ministerial duty to comply w the first decision of the Executive Secretary of September 27, 1955. Acting a prayer contained in the petition, the court issued a writ of preliminary prohibiting Commissioner of Customs from delivering the garlic to the Manager of the NAMARCO for the purpose of sale, as ordered by in the Cabinet resolution.

The respondent promptly filed a motion to dismiss, alleging (1) that the without jurisdiction of the subject matter, because appeals from the decision of the Commissioner of Customs in the matter of confiscation of goods and merchandise may be taken only to the Court of Tax Appeals, and not to the Court of First Instance; (2) that the action was barred by prior resolution Supreme Court in G. R. No. L-9778, entitled Kho Kun Commercial vs. the

Commissioner of Customs and the Manager of the NAMARCO, to the effect that appeals from decisions of the Commissioner of Customs should be taken to the Court of Tax Appeals only; and (3) that the complaint states no cause of action, because only the President of the Philippines is empowered to release the garlic in question, and no order from the President has been that effect.

In a very lengthy decision, the respondent judge reasoned that the Kho Kun Commercial was deprived of its property without due process of law by the action of the NAMARCO; that the provision of Republic Act No. 1296 prohibiting the importation of garlic is not applicable to the two shipments of the Kho Commercial, because the contracts for the shipment were made on June 1, 1955, and the law (Rep. Act No. 1296) took effect only after 15 days from its publication, or after the contracts were entered into; that the Cabinet as an advisory body cannot reverse the action of the President; and that the Commissioner of Customs has the ministerial duty to comply with the orders of the President, especially with that authorizing the Kho Kun Commercial to redeem the garlic shipments. It, therefore, refused to dismiss the action, or to lift the preliminary injunction it had issued, and granted permission for the amendment of the petition so as to make appear that the action falls under the jurisdiction of the court and that the action is not the same as that dismissed by the Supreme Court. It further held that there is a cause of action either against the NAMARCO or the Commissioner of Customs, or both.

There is no doubt that the action brought in the Court of First Instance of Manila (Special Proceedings No. 27836) is the same action brought by the Kho Kun Commercial in this Court as G. R. No. L-9778. The subject-matter of the action in both cases is the garlic imported by Kho Kun Commercial into the Islands on June 20 and July 21, 1955. The parties are also the same. The petitioner is the same. In G. R. No. L-9778 the respondents are the Commissioner of Customs and the Manager of the NAMARCO, while in the case in the Court of First Instance, only the NAMARCO; but the Commissioner of Customs is a necessary, if not an indispensable party in the latter case, because it is alleged that the Commissioner of Customs does not allow redemption by petitioner of the garlic (par. 4 of the petition in Special Proclamation No. 27836), that it is his duty to deliver the garlic to petitioner in compliance with the order of the Executive Secretary (par. 16), and that the delivery hereof by the Commissioner of Customs to the NAMARCO is illegal (par. 17), etc. The Commissioner of Customs should have been included as a party as his act is sought to be impugned and prohibited. The failure to do so, whether knowingly or not does not operate to save it from the objection that the same parties in the Supreme Court case are involved in the Court of First Instance case.

The issues involved in both cases are also clearly the same. In one as well as in the other, Kho Kun Commercial claims that the Commissioner of Customs is not permitted to ignore the Presidential directive through the Executive Secretary on September 27, 1955, and that Kho Kun Commercial be permitted to redeem the said garlic shipments, and his (Commissioner of Customs) intended delivery of the garlic to the NAMARCO by virtue of the Cabinet resolution, for sale to the public, is illegal and void. The mere fact that new issues are raised, i.e., that a Cabinet resolution may not change or modify a Presidential directive, or that the importation of the garlic is not illegal because it was contracted for after the law took effect, does not take the case out of the rule of bar by prior judgment, because under this rule not only are the issues actually passed upon barred, but any other issue that could have been raised in the previous case (Rule 39, Sec. 45, Rules of Court; *Penalosa vs. Tuason*, 22 Phil., 303, 312).

In G. R. No. L-9778, we ruled that the Kho Kun Commercial's remedy in the matter should be addressed to the Court of Tax Appeals. This ruling, which has long ago become final, is based on the law creating the Court of Tax Appeals, which grants the latter exclusive jurisdiction over cases involving decisions of the Commissioner of Customs in forfeiture cases [Sec. 7, par. (2), Rep. Act No. 1125]. The import of the above ruling is that said court is the only court that can take cognizance of such forfeiture cases, the Supreme Court and the Court of First

Instance included. The above ruling bars the Court of First Instance from taking cognizance of special proceedings No. 27836, and from granting any of the remedies prayed for therein. The writ is hereby granted, and the respondent judge is hereby prohibited from taking cognizance of the case (Special Proceedings No. 27836, Court of First Instance of Manila) as beyond his court's jurisdiction, and the orders issued by him in said case are hereby declared null and void. With costs against respondent Kho Kun Commercial. So ordered.

Parás, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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