

TAN TUAN ET AL., PETITIONERS, VS. LUCENA FOOD CONTROL BOARD, FEDERICO V. MARQUEZ, GODOFREDO REYES, ALFREDO BONUS, TEOTIMO ATIENZA AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-1451. October 06, 1949

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal by certiorari from a decision of the Court of Appeals, which affirmed a decision of the Court of First Instance of Tayabas, now Quezon, ordering the Clerk of Court to deliver to the plaintiffs the sum of P398.70, deposited with the court as the legal price of certain merchandize which had been seized and sold by the Lucena Food Control Board. Except to this extent, the complaint, which sought the recovery of P3,000 as the value of said goods and P1,000 for damages, was dismissed without special findings as to costs. The appellants in the Court of Appeals and petitioners for certiorari in this Court are the plaintiffs.

It appears that on June 14, 1945, the plaintiffs, Tan Tuan and Uy Sinte Te Pecuy, attempted to bring to Manila from the municipality of Pagbilao, province of Tayabas, three barrels of coconut oil and sixteen sacks of cassava flour. The Court of First Instance and the Court of Appeals found that those articles were intended not for the personal use of the exporters or their families but for sale in the black market. They found from the evidence that the plaintiffs hid the merchandize in the truck under "one enormous pile of firewood" which concealed it from view.

Upon reaching Lucena, the oil and flour were discovered, seized and sold by the Lucena Food Control Board, as above stated. The Board provided for compensation to the owners, at the control price, for the flour but not for the oil, although, later, compensation was extended to the oil by direction of the Military authorities. The articles were forthwith rationed to the public at the official price and the proceeds were offered to the owners, but the latter turned them down demanding the return of the merchandize or its market value in cash.

It is contended that the Court of Appeals erred—

- "1. In recognizing the Lucena Food Control Board as a legal entity.
- "2. In disregarding the Exhibits I, M, C and E (Appellants' Brief pp. 6-10).
- "3. In affirming the decision and admitting the judicial deposit made by the defendants-respondents over and above the opposition of the petitioners.
- "4. In ordering the proceedings on deportation in conformity with section 69 of the Revised Administrative Code.
- "5. In not adjudging the return of the goods illegally confiscated by the Lucena Food Control Board the reasonable and actual value of the same."

The fourth assignment of error is not subject to review. A mere recommendation to the executive branch of the government concerning an administrative matter, it is not an adjudication of any rights enforceable by the court.

The first three assignments of error have to do with the legality of the seizure and sale of plaintiffs' goods by order of the Lucena Food Control Board. They will be taken up and discussed jointly.

The Province of Tayabas had been declared liberated before the confiscation on June 14, 1945. So far as we can gather from the plaintiffs' allegations and argument, it is their contention that upon the announcement of the province's liberation the ordinary constitutional processes of government were automatically reestablished, stripping the defendants of their powers. We cannot agree with this view.

The liberation of the province without more did not terminate military control. Notwithstanding such liberation, and although as early as February 27, 1945, General MacArthur had declared "the full powers and responsibilities under the Constitution restored to the Commonwealth," it is a fact that actually the province was still in a state of war on June 14, 1945. According to the findings of the Court of First Instance and the Court of Appeals, military operations in Tayabas on and after that date continued, except in Lucena and a few other municipalities. The civil authorities of the Commonwealth had not taken charge of the government in the province; the provincial governor and the mayors there, were military appointees, and were acting in pursuance of military law and military directives.

This phase of the case is controlled by the laws of war. The Rules of Land Warfare, published by order of the Secretary of War on October 1, 1940, and based on treaties and on practices of civilized nations, determined the time when military occupation might be considered at an end. Entitled "Cessation of Occupation," Section 280 of those Rules provides that the occupation ceases when "the occupant evacuates the district or is driven out by the enemy, or by levee en masse, and the legitimate government actually resumes its functions."

The fact that this was not foreign territory did not deprive the United States Army of the status of belligerent occupant. Military government may be established not only in foreign territory occupied or invaded in time of war, but also domestic territory in a state of rebellion or civil war. (Chase, C. J., in *Ex parte Milligan*, 4 Wall 2, 141, 18 Law ed., 281.) This right to establish government is not at all dependent upon the right of conquest, but is treated as an incident to the mere right of belligerent occupation. A nation can not conquer its own territory, but it may subdue and occupy such portions of it as are made the theater of an insurrection against its authority (*Hefferman vs. Porter*, 96 Am. Dec., 459), or, for that matter, of foreign invasion. Also, the occupied territory may belong to a state allied to the occupant, and which willingly confides its domain to the protection of it. (3 Hyde International Law [1945] 1876, 1877.)

The Lucena Food Control Board, though composed of civilians, was an instrumentality of the Army and acted within the scope of the powers conferred upon it. What is more, the acts that are the subject of complaint were confirmed and ratified by the proper military authorities afterward.

The Philippine Civil Affairs Unit known for short as PCAU was created in pursuance of the Field Manual issued by the United States War Department on December 22, 1942, and subsequently amended on December 22, 1943. It was entitled "Manual of Military Government and Civil Affairs." It provided for civil affairs control and supervision of the activities of civilians by an armed force, by military government or otherwise. In occupied territory "the commander by virtue of his position" was given "supreme legislative, executive and judicial authority limited only by the laws and customs of war and by directives from higher authority." Among other things, it provided for "supervision of the distribution of food and other supplies; control of prices; rationing; prevention of hoarding and black markets; regulation of exports and imports; allocation of imports for local distribution; regulation of military requisitions and purchases; establishment of policies to be followed in

stimulating local production."

The Military government in Tayabas pertaining to civil affairs was organized in accordance with the rules prescribed in that Field Manual. The Army officer in charge of PCAU in the province appointed the provincial governor and municipal mayors. And in order the better to carry out the provisions of Executive Order No. 1 of the provincial governor, issued at the instance of the military authorities, the municipal mayor of Lucena created the defendant Lucena Food Control Board and appointed its members with the approval of Captain Leon Schneider of the United States Army in charge of PCAU. The governor's executive order just referred to made it unlawful for any person to carry or export any prime commodity from Tayabas to any place outside its territorial jurisdiction. It allowed the removal out of the province only of commodities or livestock intended for personal use and on permit secured from the provincial governor or the municipal mayor concerned.

The municipal mayor of Pagbilao had issued a permit to the plaintiffs to export the oil and flour that were confiscated, but that permit did not afford the permittees protection, being in violation of the provincial governor's executive order and military directives which forbade the exportation of such goods for commercial purposes. It might be argued that the Lucena Food Control Board's authority did not embrace goods exported from another municipality. However that may be, the question is inconsequential; the defendants' action, as has been seen, was confirmed, ratified and sanctioned by the Philippine Civil Affairs Unit who had Jurisdiction throughout the entire province.

Upon the foregoing considerations, the decision of the Court of Appeals is affirmed, with costs against the petitioners.

Moran, C.J., Ozaeta, Paras, Feria, Bengzon, Padilla, Montemayor, and Reyes, JJ., concur.

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