

**SEBASTIAN SARMIENTO, ET AL., PETITIONERS-APPELLEES, VS. HON. ELEUTERIO CAPAPAS, AS COMMISSIONER OF CUSTOMS, ET AL., RESPONDENTS-APPELLANTS. GREGORIO GAMULO, ET AL., INTERVENORS-...**

*G.R. No. L-15509. March 31, 1962*

Ponente: LABRADOR, J.

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**LABRADOR, J.:**

Appeal from a decision of the Court of First Instance of Ilocos Norte, Hon. Delfin B. Flores, presiding, in Civil Case No. 2790 of that Court, declaring the nullity of Barter Permit No. BT-1380 (SP) issued to the Philippine Tobacco Flue-Curing and Redrying Corporation (hereinafter called PTFRC) and all the importations made thereunder, and ordering the forfeiture to the Government of said importations.

The original action in this case was presented on May 28, 1958 and the petition seeks the issuance of an injunction against the respondent Collector of Customs and Commissioner of Customs to prohibit them from-releasing the importations made under the Barter Permit No. BT-1380 (SP) in the name of the Philippine Tobacco Flue-Curing and Redrying Corporation, and to order the respondents Collector of Customs and Commissioner of Customs to institute seizure and confiscation proceedings of the importations of tobacco under said Barter Permit No. BT1380 (SP).

On June 9, 1958 the petitioners filed a motion to be permitted to file a new petition for declaratory relief, in substitution of the petition for prohibition with preliminary injunction. The principal allegations of the amended petition are as follows:

That on May 1 to 6, 1958, shipments of 666 hogsheads of Virginia Type Leaf Tobacco, worth \$314,675.62 were imported by the Philippine Tobacco Flue-Curing and Redrying Corporation under the Barter Permit No. BT-1380 (SP) issued on January 21, 1958;

That on May 8, 1958, the Collector of Internal Revenue issued an authority to release the said imported goods, which authority was addressed to his co-respondents Hon. Eleuterio Capapas, as Commissioner of Customs and/or Hon. Isidro Angangco as incumbent Collector for the Port of Manila, declaring that said 666 hogsheads of tobacco were imported under the Barter Permit No. BT-1380 (SP) dated January 21, 1958 by the No-Dollar Import Office;

That on May 13, 1958 the administrator of ACCFA addressed a communication to the Commissioner of Customs, Manila, stating that he had no objection to the release of the imported Virginia leaf tobacco or the release of said 666 hogsheads of tobacco;

That the said shipments of 666 hogsheads of tobacco form part of several other shipments of Virginia Type Leaf Tobacco, which are due to arrive at the Port of Manila under the same Barter Permit No. BT-1380 (SP), which tobacco will aggregate in value to the sum of \$4,900,000.00;

That the respondent, Mr. Juan Echiverri, in his capacity as President of the Ilocos Norte Federation of Facoraas, failed miserably to protect the Virginia tobacco producers in failing to register the objections of the different members of the Ilocos Norte Federation Facomas against the said importations of Virginia leaf tobacco;

That the Barter Permit No. BT-1380 (SP) issued by the No-Dollar Import Office on January 21, 1958, in favor of the Philippine Tobacco Flue-Curing and Redrying Corporation, was issued in violation of the provisions of existing laws, particularly Republic Acts Nos. 1194 and 1410;

That the certificates issued by the ACCFA and/or the Bureau of Internal Revenue were false because we have surplusage of indigenous production of Virginia type leaf tobacco in the Philippines, which is sufficient to maintain the manufacture of tobacco production;

That the importations in question are not actually covered by any Central Bank license whatsoever; That as early as January, 1958, petitioners had already protested with the Secretary of Commerce and Industry against the issuance of barter permits for such kind of tobacco;

That the Commissioner of Customs and the Collector of Customs for Manila are in possession, custody, and control of any and all documents pertaining to the importations made under the aforesaid Barter Permit No. BT-1380 (SP);

That the Commissioner of Customs and the Collector of Customs threaten to release the whole or part of said shipment to the Philippine Tobacco Flue-Curing and Redrying Corporation, some 60 hogsheads having been already released in violation of existing laws, more specifically Republic Act Nos. 1194 and 1410.

It is prayed that the court determine—

- Whether the barter permit in question is legal or valid;
- Whether Sec. 1 of Republic Act No. 1194 in relation to Republic Act No. 1410, permits barter of Virginia leaf tobacco;
- Whether the administrator of ACCFA can issue a certificate under the law in view of the actual and existing fact of surplusage in the production of Virginia leaf tobacco; and
- Whether the Virginia leaf tobacco so imported may be forfeited to the government. The respondents filed their respective answers. Respondent Echeverri, on June 25, 1958, denied the charge that he failed miserably to protect the interests of tobacco growers.

Harry Stonehill likewise denied all the material allegations of the petition, but admitted that the barter permit was issued to the PTFRC, after favorable endorsements were made for its issuance; that several shipments have already been made to the company under said barter permit; and that a part of said shipments has already been delivered to the consignee. As special defenses, he claimed that he is not the real party in interest, the barter license having been issued to the PTFRC, of which he is only the President, and that the amended petition is not proper because there was already a breach of the law upon the issuance of the barter permit.

Respondent Jimenez denied all the material allegations of the petition, except the issuance by the No-Dollar Import Office of the barter permit and his certification authorizing release of the shipment; and as special defense he alleged that the subject matter is no justiciable for declaratory relief.

Respondent Quirino also filed his answer, claiming that the barter permit was issued by him in compliance with a Presidential Directive dated January 13, 1958.

On July 14, 1953, respondents Capapas, Angangco and Arafias filed their joint answer, denying, like their

correspondents, all the material allegations of the petition. As special defenses, they claim that the petition states no cause of action against them individually, and that the petition is improper because there is no justiciable controversy and there is no violation of law.

On November 19, 1958, respondents Capapas, Arafias, Quirino and Stonehill, filed a joint motion asking the court to set a preliminary hearing on the special defense that the petition does not state a cause of action for declaratory relief, but the motion was denied.

After the hearing and on March 12, 1959 the court rendered the decision, which is now sought to be reviewed, thus:

"IN VIEW OF THE FOREGOING, the court finds and so holds that; (1) the report (indorsement) Exhs. '3-Jimenez, '3-Capapas' and Intervenor, of respondent Jimenez recommending the approval of respondent Stonehill's request to import 10,000,000 lbs. of Virginia leaf tobacco by means of barter is manifestly against the spirit and letter of Sec. 1 of Republic Act No. 1194 construed in relation to Sec. 6 of Republic Act 1410 and is, therefore, illegal (2) The Barter Permit No. BT-1380 (Special), Exh. 'JJ-1' and 'JJ-2'; Exhs. '2' and '2-A' and '4' and '4-A', issued by respondent Carlos Quirino to the Philippine Tobacco Flue-Curing and Redrying Corporation of which respondent Stonehill is the President must necessarily be without legal basis. (3) The home grown Virginia leaf tobacco cannot be bartered with Virginia leaf tobacco coming from abroad because the entrance of Virginia leaf tobacco to the Philippines unless there is insufficiency of home-grown Virginia tobacco for local consumption is prohibited by Sec. 1 of Republic Act 1194 construed in relation to Sec. 6 of Republic Act No. 1410. Therefore, the Virginia leaf tobacco imported by the Philippine Tobacco Flue-Curing and Redrying Corporation of which respondent Stonehill is the President from the USA by virtue of the said Barter Permit No. BT-1380 (Special) has entered this country in flagrant violation of the above-mentioned laws and, that being the case, (4) all of the said Virginia tobacco so far imported as above stated must be confiscated in favor of the Government in accordance with Sec. 1-e of Republic Act No. 1194.

"In view of the penal provision of Republic Act 1194, the Clerk of Court is hereby directed to furnish the honorable Secretary of Justice with a copy of this decision for his information."

The most important error assigned on the appeal is the ruling of the trial court that although there has been a breach of the law, as the breach continued and could continue up to January 21, 1960, when the barter permit, would expire, the breach is not yet complete.

The above ruling of the court is an express violation of , Sec. 2 of Rule 66, which reads as follows:

"Sec. 2.—A contract or statute may be construed before there ., has been a breach thereof."

In the case of *De Borja vs. Villadolid*, 85 Phil., pp. 3639 we held:

"x x x We are only concerned with the question whether or not the complaint for declaratory relief filed by plaintiff, and which the Court of First Instance of Manila dismissed for lack of merit, should be given due course in this Court.

"It appears that the Director of the Bureau of Fisheries demanded that plaintiff pay the license provided in that Act and in view of the insistent refusal of plaintiff to comply with such demand, he finally turned over the case to the Office of the Fiscal of the City of Manila for appropriate action. However, plaintiff, upon learning of the step taken by the Director of the Bureau of Fisheries, countered by filing this complaint for declaratory relief, but this attitude of the plaintiff will only result in multiplicity of actions which should always be avoided and the Rules of Court obviously seeks to prevent when, in section 2 of Rule 66, it provides that the action for declaratory relief must be brought 'before there has been a breach' of a contract or statute the construction of which is sought.

"The facts in this case are so clear and unambiguous, that in the light of said section 2 of Rule 66, there is nothing left for the courts to adjudicate or construe regarding the legal rights, duties and status of appellant in the premises. The general purpose of a declaratory judgment act is to provide for adjudication of the legal rights, duties, or status of the respective parties." (1 C.J.S., p. 1022; see also 16 Am. Jur., p. 284; (De Borja vs. Villadolid, 85 Phil., pp. 36-39).

Following the above-quoted decision, if an action for declaratory relief were to be allowed in this case, after a breach of the statute, the decision of the court in the action for declaratory relief would prejudice the action for violation of the barter law.

The institution of an action for declaratory relief after a breach of contract or statute, is objectionable on various grounds, among which is that it violates the rule on multiplicity of suite. If the case at bar were allowed for a declaratory relief, the judgment therein notwithstanding, another action would still lie against the importer respondent for violation of the barter law. So, instead of one case only before the courts in which all issues would be decided, two cases will be allowed, one being the present action for declaratory relief and a subsequent one for the confiscation of the importations as a consequence of the breach of the barter law.

The impropriety of allowing an action for declaratory relief, after a breach of the law, can be seen in the very decision of the court itself, which is now subject of the appeal. Whereas the case at bar was purported to bring about a simple declaration of the rights of the parties to the action, the judgment goes further than said declaration and decrees that the importation by the respondent corporation violates the law, and further directs that the legal importation be confiscated under the provisions of the law (Section 1 (e), R. A. No. 1194). This confiscation directed by the court lies clearly beyond the scope and nature of an action for declaratory relief, as the judgment of confiscation goes beyond the issues expressly raised, and to that extent it is null and void.

That the proper remedy under the circumstances was an action for injunction, and not one for declaratory relief, is evident from the fact that the original petition was for injunction; petitioner herein only changed the nature of the action into one for declaratory relief when, as they explain, they found out that they did not have funds for the writ of preliminary injunction.

As a final reason for dismissing the present action, we have the undeniable fact that as of this date (March, 1962) the permit had expired two years before (its life extended to January 21, 1960 only), and all the shipments under the permit had already been delivered to the consignee and used in the manufacture of tobacco. The petitioner did not secure a writ of preliminary injunction, as this remedy is not proper in an action for declaratory relief as a result, aside from the complete violation of the barter law, the importations have already been completely used up in the manufacture of tobacco during the pendency of these proceedings.

Under the circumstances and at present, of what use will a declaration of the rights of the parties under the barter law be. In fact as of the date of this decision the issues have become moot and academic and the court can do no other than declare the action to be so and of no practical use or value.

FOR THE FOREGOING CONSIDERATIONS, judgment appealed from is set aside and the action for declaratory relief dismissed. Without costs.

Bengzon, C.J., Padilla, Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and De Leon, JJ., concur.

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